THE INSTITUTE EXAMINATIONS

By R. N. CARTER, M.Com., F.C.A.

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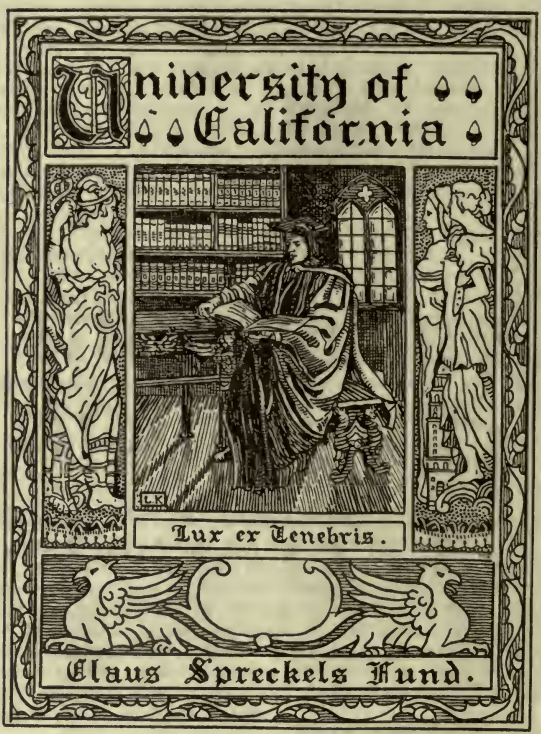

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THE
INSTITUTE EXAMINATIONS

A Revised Reprint of a Paper read before the Members of the Manchester Chartered Accountants Students' Society (Presidential Address) on February 6th 1910, and Leicester Chartered Accountants Students' Society on February 8th 1910,

BY

ROGER N. CARTER, M.Com., F.C.A.

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PREFACE.

IN response to somewhat numerous requests, I have revised this lecture as a pamphlet for general circulation. If the perusal of it is of assistance to candidates in reaching obscure points and investing their reading with more interest, my object will have been achieved. I trust the reader will not consider that it contains all that he requires to know—my idea has been simply to *guide* the student.

ROGER N. CARTER.

16 *Kennedy Street*,
Manchester,
June 1911.

CONTENTS.

THE INSTITUTE EXAMINATIONS.

By Roger N. Carter, M.Com., F.C.A.

THE INSTITUTE EXAMINATIONS.

By ROGER N. CARTER, M.Com., F.C.A.

A PAPER read to the Manchester Chartered Accountants Students' Society (Presidential address), 6th February 1910, and to the Leicester Chartered Accountants Students' Society 8th February 1910.

About three years ago I read a paper on the Institute Examinations to the Manchester and the Liverpool Societies, and (even at the risk of repetition) I am now elaborating that paper. It is difficult, if not impossible, to break much new ground on subjects suitable for accountant students, but as it is new generations of students to whom lectures are given, no apology is necessary for repeating old matter.

The passing of the examinations must (or should) bulk largely in the mind of a student, and though it by no means necessarily follows that the eminently successful examinee will become an equally eminent practitioner (so much depending on opportunity, &c.), success at the examinations must, other things being equal, always be an important factor as a recommendation in applying for an appointment.

As on the former occasion, I do not propose to lay down any detailed scheme of work, but rather to deal on broad lines, and then I wish to indicate some of the principal decisions which should be known to an accountant, particularly for examination purposes, but also as a general guide to commercial knowledge.

I do not propose to give a list of suggested books, but would again enter a protest against the recommendation

of the Institute to read "Walker and Elgood" for Executorship Accounts. I repeat, that for our purposes it is almost useless.

It goes without saying that every student should join his local Students' Society, and I strongly advise all to take *The Accountants' Journal* (Manchester students, of course, have the option of receiving it free), in which they will get, month by month, practically all the lectures delivered, as well as much other valuable information. *Law Notes* is also a paper which may be read with very great benefit by all accountancy examinees. New decisions, &c., and new legislation, found there, should be carefully noted against the respective points in any text-books of your own which you have.

In commencing one's studies, my idea is, in the first instance, to read a subject well, say, for a week—not to jump from one to another daily.

As to the time to spend, do not try how *little* you can do with, but rather how *much* you can put in. Five winters is none too much to go well over your subjects, and, if you do this, you may fairly have your summers free. Bear in mind that you may frequently not be fit to do evening work, after a full day at the office, and your intended idea of doing three or more hours per day for your last six months may entirely break down.

An excellent thing is to write answers to questions and get a friend to correct, doing the same for him. This will train you to express your ideas properly. Be hypercritical towards each other—it will be better for you both. No one can be expected to write answers in cold blood without correction, and many valuable hints are obtained by an exchange of ideas.

It is this answering of questions which, for one thing, makes me advocate a long course of study. I am conscious of the time it takes, but such time is well spent. Nixon's Examination Guides and the Institute Examination papers since 1903 (without answers) should be used.

Again, if you come across something you do not know, *look it up yourself* first (by all means ask someone if you cannot get the answer or cannot understand it); then, if asked about it, you will probably remember it was the point you went to look up "that day when it was snowing, &c. . . ." By looking it up yourself, you will impress it on your mind far more than you would by getting an immediate answer from a good-natured friend.

Let the candidate be impressed with the idea, which must be true, that the examination is for the purpose of ascertaining what he knows, and that there are no traps, and he will answer with confidence. Answer questions fully—err on the side of giving *too much* rather than *too little* information, but separate the main answer from the rest--this will enable the examiner to pass over the "enlargement," if he did not look for it. For example, if you are asked: "Can a person share profits without being a partner?" do not just give the instances where he can—*e.g.*, agent, widow, person lending in consideration of a share in the profits—but go on and state the disability of such last-named person.

Again, never give a bald negative or affirmative, or an unsupported statement as an answer. Taking the question that was one asked:—

> "A ship containing a cargo of wheat is wrecked and lost on 8th December. A., not being aware of this, agrees on 9th December to sell the wheat therein to X. Can X. maintain an action against A.?"

A perfectly correct answer is "No," but the proper answer, to my mind, is: "No. Section 6 of the Sale of Goods Act provides that 'Where there is a contract, &c. . . .' and therefore this contract is void." You might legitimately give the further information as to the effect, if the ship had been lost on the 10th December.

If asked for views on a point under various circumstances, (*a*), (*b*), and (*c*), answer in the same way:—

"The position is as follows:—

In case (*a*) . . . .
,, ,, (*b*) . . . .
,, ,, (*c*) . . . . . ."

Do not go into an essay on the point in general terms. The examiner wishes to know what your views are under specific circumstances—be concise and to the point.

LET YOUR WRITING BE CLEAR AND DO NOT EXERCISE ECONOMY IN *PAPER*.
DISPLAY YOUR ANSWERS.

Whatever feelings of malice you may have towards your examiner for the time being, he is, after all, a fellow creature, and can be forgiven if, with 150 or 200 papers to examine, he is inclined to be unduly severe on a candidate whose answer looks like this:—

"TheStatuteofFraudsprovidesthatapromisebyanexecutor anacknowledgmentofastatutebarreddebtaguarantyanagreementconcerninglandandanagreementnottobeperformedwithinayearmustbeinwriting."

as against one who gives the same information in this way:—

(1) A promise by an executor, &c.
(2) An acknowledgment, &c.
(3) A guaranty,
(4) An agreement concerning land,
(5) An agreement not to be performed within a year,

must be in writing.

As to the absolute writing out of the answers, read the whole paper first, and get an idea of the class of questions; then answer those you can do easily, and afterwards turn to the others.

Confine your answer to the question asked, but do not be afraid of giving too much information. As, however, it is impossible to know an examiner's ideas as to what would or would not be redundant, I give you the following suggestion:—

(1) Answer the *exact point* asked upon *first*.

(2) Then, and in a *separate paragraph*, follow it up with anything which is *to the point*, but may possibly not be required.

Thus, assume the following question to be asked :—

> The name of A., a holder of shares, is forged, and a transfer is executed purporting to transfer his shares to B. What are the positions of A., B., and the company respectively?

A complete answer to it is (see *post*) that—

> B.'s name will be removed from the register, and he has no remedy against the company, as he neither parted with his money nor was not damnified by any action on their part. (*Simm v. Anglo-American Telegraph Co.*)

and perhaps this might be all the examiner expected. On the other hand, as it is not expected that every question will wind up with the usual, "If so, how many? and why?" and one would explain "*Why*" in all cases; so, where there is an authority for the effect which is produced where facts are slightly different from those stated, I think the answer should continue (in a *distinct paragraph*, so that the examiner can ignore it if he did not look for it) :—

> But if B. had sold the shares to C. before the forgery was discovered, C. can insist on remaining on the register (as well as A. being put back), he having parted with his money *on the strength of the certificate*.

Be especially careful that you *understand the question*, and practise casting your thoughts round every possible ramification of it. One cannot expect all minds to run in the same groove; but, to me, the question asked some years ago, "What are the divisible profits of a company?" could lead only to one answer—a discussion of such cases as *Lee v. Neuchatel Asphalte Company* and *Verner v. The*

Industrial and General Trust, Lim.—yet I have seen the question answered, *without reference*, to the effect that divisible profits are "profits made and which can rightly be divided." A student who would give such an answer would never dream of saying that he would "conduct an audit" by "applying the necessary tests to the accuracy of the figures," and yet the one answer is on exactly the same lines as the other.

In contrasting two things, *e.g.*, a bill of exchange and a promissory note, always begin by a definition of each, then say whether they are generally alike, or generally different. If alike, then deal with the differences; if unlike, go on to the few points where they agree.

Be careful that you know definitions, and practice making them for yourself; put down the definition first, and follow it with examples. Where there is a statutory definition, that must be considered the best, otherwise one may be as good as another. I have heard a "specific legacy" defined as, "say, my horse," and others similarly. Of course, the *definition* is "a gift of a specific thing by will, as, for example, 'my horse.'" Again, one has seen "consideration" defined as "money, or money's worth and marriage." Of course, the *definition* is "some right, "interest, profit, or benefit accruing to one party, or some "forbearance, detriment, loss, or responsibility given, "suffered, or undertaken by the other"; the other statement being the two *examples* of consideration.

As to making notes, I think this a useful practice, but the notes should, I think, be *reminders only*, thus:—

Bill of exchange discharged in six ways.

Special resolution in bankruptcy required for three purposes.

&c.

I will now take the papers *seriatim*, and give you such suggestions as my experience leads me to believe will be useful to you.

I.—Bookkeeping.

As to the detail work of bookkeeping papers, I suggest not only taking a separate sheet for each question (that goes without saying), but a separate sheet for the account of each partner (in a complicated division of profits), giving only the balance of his account on the Balance Sheet. My object in this suggestion is that, if you find that you have made a clerical error, one or two alterations on each of such sheets is simple, and does not look bad; whereas, if the alterations are all on the one account, the sheet seems a mass of corrections.

Don't spend five minutes ruling-off accounts and bringing down balances; your account shows what the balance is, and your five minutes will be better spent doing the last question or revising one already done.

Nothing but practice will avail in working account questions, but to this must be added a sound knowledge of principles. Among the points to be observed are the following:—

(*a*) *Accounts Current.*

In an account current, interest must be calculated from the *due* dates; thus, where an account current is rendered at 30th June, and there is a sale on the 31st May *due* 31st July, the consignor must be *debited* with one month's interest. Remember, also, an account current is a copy of the account out of the Ledger of the person who *sends* it.

(*b*) *Appropriation Accounts.*

In appropriating the balance of a Profit and Loss Account, income-tax should be allowed on the total, and debenture interest and preference dividend should be entered net; or debenture interest and preference dividend should be entered gross and tax taken on the net figure. I have seen tax taken on the total and interest entered in full. This would, of course, leave a company with the tax on the interest, &c., in hand.

(*c*) *Branch Accounts.*

In drawing a Balance Sheet the balance of the Branch Accounts should be eliminated as such, and the items added to the corresponding assets and liabilities in the Balance Sheet.

Thus, if the Branch Balance Sheet were—

Head Office ...	£1,000	Stock	£500
		Debtors ...	500

and the Head Office Balance Sheet had the item "Branch £1,000," this would, when the final Balance Sheet was prepared, be entered among debtors and stock.

(*d*) *Consignment Accounts.*

In dealing with Consignment Accounts always pass account sales to *Cr.* of Consignment Account, and to *Dr.* of a personal account for the agent. It is well to get into this method, for though if the agent remits the full amount you might well save the *personal* entry, it so frequently happens that the remittance is only on account that it is best to get into the technical method.

(*e*) *Hire-Purchase Accounts.*

In my view the best method of dealing with these is to debit the Wagon Account the *net cash price* of the wagons, and credit the seller. Then credit seller and debit Revenue Account periodically with interest, charging the seller with the instalments as paid, so that the last payment closes his account. The wagons should be described on the Balance Sheet as "under hiring agreement," and the liability in respect of them should be deducted from the asset.

An alternative method is to estimate the value of the wagons at the date the last payment is due, debit Wagon Account with so much of each instalment as will bring the account up to that figure, and charge the balance of each instalment to revenue as interest and depreciation.

In my opinion the former is the better and more scientific.

Exception is sometimes taken to it on the ground that the wagons belong to the wagon company and not to the hirer, but the method I support gives fuller information and deceives no one; and, when all is said, our endeavour should surely be to take a practical view.

(*f*) *Income Tax.*

(1) The Schedule A assessment should be deducted off the profit of each year *before* striking the average.

(2) Depreciation should always be written back, and then claimed *after* the average has been ascertained.

(3) Though interest must be written back to find the assessable profit, it must be deducted again to ascertain the abatement limit.

(4) It is this same figure (and before deduction for abatement) that is to be taken in ascertaining the life insurance allowance.

> As an illustration of (3) and (4): Take profit £1,000, out of which interest £500 is payable. The *assessable* profit is £1,000, but this is subject to an abatement of £150 (income not exceeding £500 net), and life insurance may be claimed only up to one-sixth of £500.

(5) Where the partners' shares are unequal, whether by reason of interest on capital, salary, or otherwise, regard must be had to these points, both in respect of charging the tax and of abatements, thus—

Profit	£1,950		£1,850		£1,750	
A., interest on Capit'l, £500		500		500		
B., ,, ,,	200		200		200	
B., salary	150		150		150	
Balance, A. ⅔.						
,, B. ⅓.						
	1,100	1,950	1,000	1,850	900	1,750

The assessable profit is £1,850, but this must be divided as follows:—

A., interest	£500+⅔ of £1,850 - £850 (£667) total		£1,167
B., salary & int.	350+⅓ of 1,850 - 850 (£333)	,,	683
	Total ...	...	£1,850

And B. is entitled to an abatement of £70.

(6) A further important point to observe is that, where the Schedule A assessment has been deducted to arrive at the Schedule D assessment, it must be written back in the proportion *in which profits are divisible* in order to see whether there are claims for abatement.

(7) The income-tax provisions in the Finance Acts, 1907 and 1909, must be learned well.

(*g*) *Minimum Rents.*

In dealing with minimum rents I have seen students credit the landlord full royalty on the mineral got and then debit him if there is any unexhausted dead rent. This may be convenient, but it appears to me wrong in principle to credit what a man is never entitled to. The unexhausted Dead Rent Account should be looked at, and the landlord not credited more than the miniumum rent until that account is exhausted.

(*h*) *Entries for New Companies.*

I strongly advocate one entry for the assets acquired and another for the liabilities. It is then at once seen how much remains for goodwill. The entry—

Sundries. *Dr.*
To Sundries.

seem to be inexpressibly clumsy, and prevents what can otherwise be done, viz., the posting of the items to the vendor's account in detail, if thought proper.

Also, do not overlook the entry for the shares allotted to the vendor in payment (or part payment) of the purchase money.

(*i*) *Special Accounts.*

It is naturally well for a student to be familiar with as many classes of accounts as possible, especially those

regulated by statute; no one can consider himself safe without at least a knowledge of the accounts of railways, banks, solicitors, life insurance, building societies, hotels, and savings banks.

Any of these are common to all localities, whereas one might fairly complain of a question on Cotton Accounts, where it is only students from one locality who may reasonably be expected to have experience of them.

In studying the forms, notice the salient features, *e.g.* :—

(1) Railway Accounts are the most familiar instance of the double-account system.

(2) Life companies have a specified form of Balance Sheet, where the assets are specified under various heads.

(3) Building societies have their *assets* classified in amounts, whereas savings banks have their *liabilities* similarly classified.

And so on.

Some of the principal Acts to note are :—

Companies Clauses Act, 1845, applying to all companies with special Acts. No dividend to be declared whereby the capital stock is reduced. The auditor to be a shareholder.

Gas Works Clauses Act, 1847. Prescribed rate of dividend.

Gas Works Clauses Act, 1871. Statutory form.

Water Works Clauses Acts, 1847 and 1871. Similar, but no form prescribed.

Companies (Consolidation) Act, 1908, and Table A. No dividend except out of profits.

Under the old Table A dividends were payable on the *nominal* amount of the shares irrespective of amount paid up. They are now payable on the amount *paid* on the shares. Audit clauses now compulsory under Act.

Trustee Savings Bank Act, 1863, and amendment. Statutory form.

Regulation of Railways Acts, 1867 and 1868. Auditor to certify the dividend to be *bonâ fide* earned. Statutory form. Companies Clauses Act, 1845, excluded as to auditor having to be a shareholder.

Life Assurance Companies Act, 1909. Statutory form. Audit as the Board of Trade may prescribe, if the company is not already subject to audit under the Act of 1908 or 1845.

Building Societies Acts, 1874 and 1894. Statutory form. One auditor to be a public accountant.

Companies Act, 1879. Compulsory audit for banks. Now incorporated in the 1908 Act

Friendly Societies and Provident Societies Acts, 1893.

(*j*) *Balancing Ledgers separately by Adjustment Accounts.*

One sometimes hears this system described as that of "Self-balancing" Ledgers. Anyone who could invent a Self-balancing Ledger would earn the eternal gratitude of Ledger clerks and accountants generally. Students overlook the fact that on a proper system there is an account *for each Ledger* in the Impersonal or Private Ledger. By means of this account the Impersonal or Private Ledger can be balanced and rough accounts made out in a very few hours. **The danger, of course, is that a sales total is used, and the Impersonal Ledger balances, whether that total is right or wrong. It is only on making the details balance with the Adjustment Account that the total is *proved.***

By this system each Ledger is balanced separately; this is a great advantage in the event of an error in the Trial Balance, because it can be easily localised. For the purpose of illustration, suppose that two debit Ledgers are kept, A—M and N—Z, and one credit Ledger.

A separate Day Book must be kept for each Ledger, or one Day Book with a column for each Ledger. In the

latter case items which are posted to the A—M Ledger must be extended into the A—M column, and similarly with the N—Z.

The credit books are kept in the same manner.

A columnised Cash Book is necessary, which is ruled in the following manner. The A—M Ledger and N—Z Ledgers columns are, it will be noticed, in addition to the usual columns.

Cash Book.

Date	Particulars	L.F.	Discount	Bank	Cash	A-M Led.	N-Z Led.	Date	Particulars	L.F.	Discount	Bank	Cash
			£ s d	£ s d	£ s d	£ s d	£ s d				£ s d	£ s d	£ s d
1906								1906					
Jan. 1	To John Jones ..	58	1 6 8	27 0 0	..	28 6 8	..	Jan. 2	By Cash Contra	✓		10 0 0	
"	" A. Waterhouse	110	7 0 0	190 0 0	..	..	197 0 0						
" 2	" Bank Contra ..	✓	..	..	10 0 0								
	" W. Edwards ..	72	..	..	4 6 8	4 6 8							
	" C. Richmond .	115	0 1 0	1 19 0	..	..	2 0 0						

The Journal and Bills Receivable will also have to be analysed.

With the books arranged as above, an Adjustment Account can be made, showing the amount to which the balances of a Ledger should add. This Adjustment Account is kept in the Impersonal Ledger in the following manner.

A—M Ledger Adjustment Account.

1909		£	s	d	1910		£	s	d
Dec. 31	To Balance	3,268	10	7	Dec. 31	By Cash and Discount .. .. (Total of A-M col. in C.B.)	13,263	5	4
1910									
Dec. 31	" Sales .. .. (Total of A-M col. in Day Book, or total of A-M Day Book)	15,327	1	6		" Returns	584	7	3
						" Bills Receivable	1,200	0	0
	" A-M items in Journal .. .. (from analysis)	35	6	8		" A-M items in Journal .. .. (from analysis)	25	3	4
						Balance	3,558	2	10
		£18,630	18	9			£18,630	18	9
	To Balance	3,558	2	10					

The total of the balances of the A—M Ledger should come to £3,558 2s. 10d., and this shows the value of the system, for, if they do not, there is an error in connection with the A—M Ledger, either in the additions of Day Books, &c., or in the balances. If the books were kept in the ordinary way, and there was an error in the balance, it would not be known in which Ledger the error was, and it might be necessary to go through the whole of the Ledgers to find it.

If the business was of some magnitude, and several Credit Ledgers were kept, the credit side would be treated similarly to the debit side.

It will be seen that, if there is a similar adjustment for every Ledger, when the balances of the Nominal Ledger are taken out and the cash and bank balance taken into account, the total debits should equal the total credits.

The system would be made even more complete by Journal entries *for all totals,* thus making the Impersonal Ledger balance by itself absolutely.

(*k*) *Statements of Affairs and Deficiency Accounts.*

Here notice that you require a column at the extreme left-hand side for *gross* liabilities. Further, that fixed machinery passes with the freehold, and forms part of the security of the person who holds the deeds as security. Also a person holding security on the private property of a partner, or of a stranger, in respect of a debt due by the firm, proves *in full* and retains his security. The reason for this is that a "secured creditor" (who must deduct the amount of the security before proving) is one "holding a mortgage, charge, or lien *on the property of the debtor*," and such a person does not hold a charge on the property of the debtor.

In preparing a Deficiency Account, be careful to follow the bankruptcy form, and to use any items shown by the statement of affairs, in particular such items as amounts

ranking in respect of bills discounted, the difference between premiums paid and surrender value of life policies, &c.

(*l*) *Premiums on Shares.*

Legally, premiums on shares are apparently available as profit, unless the articles otherwise provide; but *financially*, they should undoubtedly not be distributed.

(*m*) *Balance Sheet and Profit and Loss Account.*

If given accounts to prepare from figures not arranged as a Trial Balance, range them so yourself, otherwise you may be looking for an error which does not exist in your working, and which would be at once apparent by the first-named method.

Also, in preparing accounts, be careful to adjust each Purchase, &c., Account by the stock in hand (instead of putting the whole of the stock to the debit and credit of profit and loss in one sum), thus showing the *consumption* and *production* of each article.

(*n*) *Forfeited Shares.*

It is astonishing what difficulty a student often has in getting the correct Journal entries in respect of forfeited shares. If he will remember the *reason for the entry* (this applies to many cases), viz., to get rid of a credit to Capital Account and a debit to Call Account, he will see that the entry must be—

Share Capital Account.	*Dr.*
Call Account.	*Cr.*

the entry being completed by a credit to Forfeited Shares Account.

(*o*) *Municipal Accounts.*

Students should pay special attention to this branch. It has been rather neglected at the examinations in the past, but it by no means follows that this will always be so. Further, accountants should be familiar with municipal accounts from a practical point of view.

(*p*) *Cost Accounts.*

This is another branch of accountancy which calls for the closest attention. It is not easy to ask a question which will bring out *actual knowledge,* but the answer of the well-read man will be readily distinguished from that of the man who has "crammed" his subject. For this subject I recommend "Hawkins" as an excellent work.

(*q*) *Paper Profits.*

Questions have been set in various forms on the method of dealing with paper profits. The *principle* is that they must not be distributed. This effect is accomplished by—

(1) Continuing the assets of the new shares at the original cost price of the asset sold; or,

(2) Entering the new shares at their full nominal value, but putting the profit to a "Profit and Loss Suspense Account," and not dividing the same till the shares are realised.

(*r*) *Purchase of a Business.*

I have repeatedly seen students make one Journal entry for *net debtors* in order to open the new books. A moment's thought should remind anyone that as an account is to be opened for each debtor, they must be entered gross, and credits made for the Discount and Bad Debt Reserves.

II.—Auditing.

As to legal decisions, I do not propose to do more than impress upon you the absolute necessity, from every point of view, of thoroughly mastering the whole of the cases so fully reported in "Dicksee." A most useful digest of these was given by Mr. Cocke in a paper to the London students, and it is procurable in pamphlet form.

These cases should be the "A B C" of an accountant student's reading, and in any question touching on any point governed by any one of them, the case or cases should be cited.

(1) *Continuous Audit.*

Note, that, by taking the impersonal balances on every occasion, the possibility of fraudulent alterations of figures is got over.

This fact is largely overlooked by students, and I have seen it solemnly stated (1) that the advantage of a continuous audit is that it can be completed sooner than if all done at once; but (2) a disadvantage is that figures may be altered; and (3) that, to be effectual, all the work must be gone over again at the end of the period! !

(2) *Theory and Practice.*

Never advocate a theoretically perfect check which you know to be impracticable. It is idle to suggest doing something which you know is impossible of accomplishment.

(3) *Verification of Assets.*

Remember that an inscribed stock is verified by application, under authority from the holder, at the Inscribing Financial House. There is not any certificate for it. A rather unfair question once asked was as to the verification of a holding of Egyptian Government 3½ per Cent. Preference Stock. How many practising accountants would *know* that this was an inscribed stock. I should suggest the answer should have been—

If inscribed (as above);

If not inscribed, see certificate;

and I think any candidate should be entitled to full marks for such an answer.

(4) *Contentious Points.*

Where asked as to an auditor's position as to a contentious point (*e.g.*, whether a municipality must provide *both* Depreciation *and* Sinking Fund), give both views, and then express your own with your reasons for it.

III.—Partnership.

(*a*) *General.*

It goes without saying that a student must be familiar with the 1890 Act and the Limited Partnership Act. The

principal point in the latter is that there must be a *general* partner (fully liable).

If asked for suggestions for articles, I consider the answer should not be that X. *should have* interest on his capital, and Y. *should have* a salary for additional services, but :—

Since the Partnership Act provides that in the absence of agreement :—

(1) Profits are divided equally;

(2) There is no interest on capital;

(3) There is no salary to a partner; &c.,

provisions should be made in respect of these points; and so on.

As to accounts, firmly impress upon yourselves that it is profits or losses which have to be divided, *not assets*. Thus, if you are told A. puts in £10,000 and B £5,000, and on a winding-up they are just able to pay their liabilities and have £1,000 over, you must first draw yourself a Balance Sheet thus :—

Liabilities...	£15,000	Assets ...	£30,000
A.	10,000	Realised...	£16,000
B.	5,000		

It is obvious there is a *loss* of £14,000, that is, £7,000 each. Therefore A. takes the £1,000 and B. must bring in £2,000 to equalise (which A. then draws).

With this firmly in your mind you should have no difficulty.

(*b*) *Goodwill.*

As to the rights of vendor and purchaser of a goodwill note *the* authority (*Trego v. Hunt*) overruling previous decisions and laying down that a vendor must not directly or indirectly solicit the old customers. The previous view had been that a man was entitled to solicit old customers if he made it quite clear he was opening a new business and not continuing the old one.

(*c*) *Joint and Several Liability.*

Knowing that a partner is liable to the extent of all he has, most students consider his liability *joint and several*. This is not so. It is joint only, the effect being that if one or more is sued without the others another cannot afterwards be sued. The maxim is, "In a joint liability "an action against one or more is a bar to an action "against another or others."

(*d*) *Appropriation of Payments and the Rule in Clayton's Case.*

On making a payment the debtor has the right to appropriate it to any item he thinks proper; in the absence of such appropriation the creditor may allocate it; and if neither of them does so the law appropriates it in accordance with the rule in Clayton's case.

This is another case which is so well established that it might not unreasonably be asked for by name. In effect the facts were as follows :—

A. was a depositor with X., Y. and Z., bankers. X. died when A. had £10,000 in the bank. A. continued his account for a period, when Y. & Z. failed. A. had run his account on, and as a whole had drawn cheques, day by day, amounting to over £10,000, and had made deposits day by day, so that when Y. and Z. failed he still had £10,000 in. He sought to set up that this was the same £10,000 as he had had when X. died, and that he could proceed against X.'s estate. The Court held that this could not be, and laid down the rule "that in an account current the first withdrawal goes against the first deposit."

An exception to this rule is that where a trustee has mixed trust funds with his own, the trust is entitled to say that he has used *his own* money and left theirs in the bank, and consequently they are entitled to receive the same and would not have to rank if there was money in the bank to pay them—or at any rate if there had always been money in.

IV.—Executorship.

This is the subject upon which it may, perhaps, be considered difficult to set a good paper which is not of inordinate length, but I would respectfully suggest to the Examination Committee that in many cases more information would be extracted by two or three questions on principle, than by the usual lengthy one, which frequently is far more of a speed test than anything else.

Any hints I can give upon this subject would almost be a repetition of my little book on Executorship, but let me impress one or two points.

(*a*) *Forms*

If *anyone* were given a list of what a deceased died possessed of, and were told to say what he had to pay duty on, he would arrive at the right result. Therefore, to show an examiner that your knowledge is derived from *study*, you should follow the Forms A3, &c.—*e.g.*, Consols would appear under the head, "Stocks or Funds of the United Kingdom," and so on.

(*b*) *Intestacies.*

As to intestacies, note that where there is a widow she is *always* entitled to one-third of the personal estate if there are children, and *always* to £500 and half the remainder if there are not. In the former case the two-thirds share goes to the descendants *per stirpes*. In the latter case you are only interested as to the one-half of the balance, and note that a father takes to the exclusion of brothers and sisters, but a mother shares with them.

(*c*) *Duties.*

Note that the rate of Estate Duty is governed by the total value of the estate; the rate of Legacy Duty by the kinship of the legatee.

(*d*) *Estate Duty and Settlement Estate Duty.*

In the case of a person dying after 19th April 1907 the Estate Duty was raised, in the case of large estates, as follows:—

Over £150,000	but not exceeding	£250,000	7	per cent.
,, 250,000	,,	,, 500,000	8	,,
,, 500,000	,,	,, 750,000	9	,,
,, 750,000	,,	,, 1,000,000	10	,,
,, 1,000,000	,,	,, 1,500,000	10% on £1,000,000 and 11% on the remainder.	
,, 1,500,000	,,	,, 2,000,000	10% on £1,000,000 and 12% on the remainder.	
,, 2,000,000	,,	,, 2,500,000	10% on £1,000,000 and 13 % on the remainder.	
,, 2,500,000	,,	,, 3,000,000	10% on £1,000,000 and 14% on the remainder.	
,, 3,000,000	..	.. .. ..	10% on £1,000,000 and 15% on the remainder.	

By the Finance (1909-10) Act, 1910 (which applies to all persons dying on or after the 30th April 1909), the rates of Estate Duty are as follows :—

Where the principal value of the estate			Estate duty shall be payable at the rate per cent. of
Exceeds	£100 and does not exceed	£500	1
,, 500	,, ,,	1,000	2
,, 1,000	,, ,,	5,000	3
,, 5,000	,, ,,	10,000	4
,, 10,000	,, ,,	20,000	5
,, 20,000	,, ,,	40,000	6
,, 40,000	,, ,,	70,000	7
,, 70,000	,, ,,	100,000	8
,, 100,000	,, ,,	150,000	9
,, 150,000	,, ,,	200,000	10
,, 200,000	,, ,,	400,000	11
,, 400,000	,, ,,	600,000	12
,, 600,000	,, ,,	800,000	13
,, 800,000	,, ,,	1,000,000	14
,, 1,000,000	.. .. ..	..	15

and Settlement Estate Duty is 2 per cent. instead of 1 per cent.

(e) Legacy and Succession Duty.

By the Finance (1909-10) Act, 1910, the scale of Legacy Duty is :—

Lineals and husband or wife	...	1 per cent.
Brothers, &c.	...	5 ,,
All other persons	...	10 ,,

but the 1 per cent. is not payable where :—

(1) The value of the property passing does not exceed £15,000; or

(2) The value of the legacy does not exceed £1,000; or

(3) The value of the legacy does not exceed £2,000; and the person taking is the widow or a child under 21 years of age.

(f) Audit, &c

The provision of the Judical Trustees Act and the Public Trustee Act as to custody of securities and as to audit should be known well.

V.—Bankruptcy.

There is no *definition* of an "act of bankruptcy." Eight *illustrations* are given, which should be learned well, also the conditions necessary to enable a creditor to present a petition. As a comprehensive definition I would suggest : "Any act of the debtor from which it may "be assumed that he is unable to meet his engagements "as they fall due."

(a) Special Resolution.

Note that a special resolution is only used for three purposes :—

(1) To appoint a trustee other than the Official Receiver under Section 121.

(2) To grant the debtor an allowance otherwise than in money.

(3) To remove a special manager.

(b) "Schemes" and "Deeds."

Distinguish between a "Deed of Arrangement" (under the Act of 1887, which is binding only on those who

assent), and a "Composition or Scheme of Arrangement" (an arrangement under the Bankruptcy Acts, 1883 and 1890, and binding on all the creditors). (See Chap. IV. of Ringwood.) In the latter case note that you find a "voting letter" and a resolution (unnamed) of a "majority in number, and three-fourths in value of *all the creditors who have proved.*" (Neither of these is found anywhere else in the Act.) Note the technical word "misdemeanour." The only misdemeanour under the Act of 1883 is, "obtaining credit to the extent "of £20 without disclosing the fact that he is an undis- "charged bankrupt" (thus, this can only be committed by a man already a bankrupt). The other misdemeanours are under the Debtors Act, and they are all *frauds.* Omitting to keep books, trading after knowing himself to be insolvent, &c., are not *misdemeanours.* For convenience I call them *irregularities.* If a debtor has committed a *misdemeanour* he cannot get a "composition or scheme" approved at all: if he has committed *irregularities* he can only get the scheme through if it provides for at least 7s. 6d. in the £.

It is only at the public examination that these facts will be disclosed—hence the reason why the Court will not hear an application to sanction a "scheme" till the conclusion of the public examination.

It must be borne in mind that there is no annulment of a bankruptcy as a *matter of right,* even though the debts are paid in full.

(*c*) *After-Acquired Property.*

Note that a bankrupt can give a good title to after-acquired *personal* property which he disposes of before the trustee intervenes (*Cohen v. Mitchell*), and to leaseholds (*Barclay v. Clayton*), but not to real property (*Re New Land Development Company*).

(*d*) *Fraudulent Preference.*

The question of whether a preference is fraudulent or not depends on the "dominant view" of the debtor, and

where a defaulting trustee replaced trust funds immediately before bankruptcy, the transaction was held valid (*Re Lake*); the "dominant view" being not to prefer, but rather to avoid a criminal prosecution.

(*e*) *Reputed Ownership.*

Let me call your attention to the Court of Appeal decision in *Re Button*, viz., that where goods pass to the trustee under the reputed ownership section the true owner may prove for their value. The lower Court had held to the contrary. Personally, I should not have thought the point was arguable, but I mention the case as a warning to any student who may chance to be reading an old book which quotes the decision of the High Court.

(*f*) *Ex parte Waring.*

This is one of those cases so well known that it may be considered a legitimate question to ask, "What was established in *Ex parte Waring?*"

(*g*) *Landlords.*

You cannot study too carefully the landlord's right to rent, and contrast it with his position as the landlord of a company. The landlord of a bankrupt is much more favourably situated.

(*h*) *Resolutions.*

Learn carefully the various resolutions (ordinary, special, and the unnamed resolution required for a "scheme," which I always call in my own mind an "extra special") and contrast the same with those in liquidations (ordinary, extraordinary, and special).

(*i*) *Preferential Claims.*

So far as I can trace, the exact order of priority appears to be:—

First—Money held as officer of a Friendly Society.

Second.—The claims under the Act of 1888 (now including the Workmen's Compensation Act, 1906).

Third—The articled pupil.

(*j*) *Disclaimer.*

Note the rather extraordinary case of *Stacy v. Hill,* where it was held that a person who had guaranteed *all rent falling due* was released by disclaimer, as after that no more rent "*fell due.*" It has been similarly held in the case of a company (*Mayor of Hastings v. Letton*).

(*k*) *Bills of Sale.*

The Act of 1882 amends that of 1878, but only with respect to conditional bills, so that absolute bills remain governed solely by the 1878 Act. One particular point is that the goods are in the bankrupt's "order and disposition" in the case of a conditional bill, but not in the case of an absolute one.

(*l*) *Other Points in "Ringwood."*

Chap. I.—

The certificate of appointment is conclusive.

Chap. II.—

An important chapter, and should be learned well. *Inter alia* note *Cook v. Vogeler,* where it was held that where a foreigner trading here executes a deed abroad it is not an act of bankruptcy; but (*Delaney v. Merry*) such a deed is good against an execution creditor.

Where one partner is an infant the bankruptcy notice must issue against the partner "other than the infant."

Chap. III.—

Another important chapter, containing—

v.—The duties of the Sheriff.

vii.—When the Court will go behind a judgment—

(*a*) If there is fraud.

(*b*) If it would be inequitable for receiving order to be made.

(*c*) If the judgment is under appeal.

viii.—The case of *Re Crook,* as to when a notice of a meeting of crdeitors is an act of bankruptcy.

Chap. V.—

The student must learn this chapter well. In particular :—

The "commencement" of the bankruptcy (Sec. 43).

Property not divisible; property divisible—and exceptions.

The case of *Re Eastgate,* where, goods having been obtained *without any intention of paying for them,* and the landlord having allowed the seller to enter and remove them (after an act of bankruptcy), the seller was held entitled to retain them.

Re Preston, and the general rights as between the trustees in two bankruptcies.

Re Falbe—that tapestries are not "fixtures."

Voluntary settlements (Sec. 47).

Fraudulent settlements (Sec. 48), where the "dominant view" is to prefer the creditor (*Re Lake,* &c.).

Completion of an execution (Sec. 45).

Protected transactions (Sec. 49).

Chap. VI.—

This is mostly "Rights and Duties," but note :—

Re Van Laun—That a trustee can re-open an *agreed* bill of costs.

Re McMahon; Fuller v. McMahon—That calls in a going company *are* capable of estimation, and can be proved for.

The Preferential Payments Acts, 1882 and 1897, and the Workmen's Compensation Act, 1907, in relation thereto.

Chap. XII.—This must be known well.

Schs. I and II.— Do.

VI.—Deeds of Arrangement.

The following points should be specially noted :—

(*a*) The deed is to be registered within seven days.

(*b*) That a deed should discharge the debtor seems contrary to the decision in *Foakes v. Beer,* that the payment of a lesser sum does not discharge a greater, as there is no consideration. The reasons for the apparent discrepancy are :—

(1) Because a *deed* does not need "consideration."

(2) If any consideration were needed, there is the mutual forbearance of all the creditors.

(*c*) If there is no provision to the contrary, *all* the proceeds go to the creditors, though they exceed 20s. in the £.

(*d*) The usual *special* provisions in a deed are :—

(1) Leaseholds are held in trust by the debtor for the creditors—they are not assigned to the trustee.

(2) Payments under the Workmen's Compensation Act cannot be assigned (Rule 19, Sch. 1).

(3) There must be power to the trustee to charge remuneration—otherwise he cannot do so.

(*e*) The options open to a person invited to assent are :—

(1) To assent.

(2) To present a petition in bankruptcy—but he cannot rely on a deed for the benefit of *some only* of the creditors (*Re Saumarez*).

(3) To stand out altogether. In this case he foregoes his share of the present assets, and retains his remedy against the debtor, if the debtor ever has any future assets.

(*f*) A person who has assent cannot present a petition. In this connection contrast *Re Brindley; ex parte Taylor,* with *Re Crow; ex parte Collier.*

Also contrast *Re Crossland; ex parte Carr*, with *Re Day; ex parte Hammond.*

(*g*) Legally, a person who will not assent to a deed, or who presents a petition, is "not entitled to the benefit of the deed." It is, however, the practice to reserve for dividend on *all* known debts.

(*h*) The trustee's accounts are to be sent to the Board of Trade "within 30 days of January 1st" in each year. The trustee must retain unpaid dividends and undistributed funds. The position as to these is not as in bankruptcy, and the Bank of England will not accept them.

(*i*) Where bankruptcy supervenes, the title of the trustee in bankruptcy relates back, and it was held in *Davies v. Petrie* that a debtor who had paid the trustee under the deed (who had absconded), had also to pay the trustee in bankruptcy.

(*j*) Usually, the trustee under the deed will not get any remuneration if bankruptcy supervenes, nor, as a rule, will the Official Receiver consent to his acting as trustee in the bankruptcy.

VII.—Companies.

(*a*) *The New Act.*

It should be almost needless to say that a candidate should now give all his references to the 1908 Act. As, however, it is a Consolidation Act (and makes practically no changes), those who have been reading over a long period may be able to give a reference to some point as having been enacted by the Act of 1900, extended by that of 1907, and finally incorporated in that of 1908.

(*b*) *Contributories.*

The liability of contributories is laid down by Section 123 of the Act. Candidates would do well to learn this by heart, and study well the dissertation on the corresponding Section (38) of the 1862 Act in "Buckley." There you will find an interesting case as follows:—A. was liable as a B contributory for unpaid shares with a liability of £10,000. There were debts existing when he ceased to be a member amounting to £5,000, and other debts amounting to £95,000. A.'s liability was, of course, limited to £5,000. A. pointed out to the £5,000 creditors that his liability existed on their account, but that when the money was called they would only get £250 of it $\frac{5000}{100000}$. He therefore offered them £500 to withdraw their claims. This saved him £4,500 at the expense of the other creditors, but was held valid (*Webb v. Whiffin*, *Re Brett*, *Re Morris*, *Re Marsh*). "Buckley" severely criticises

the decision, contending that the contributory had no right to raise such a privity of contract between himself and the £5,000 creditors.

(c) Share Certificates and Transfers.

At first glance one might be inclined to think that if one has a certificate of shares the company should be prohibited from repudiating it, and the mere citation of cases to the contrary is puzzling. But a closer examination of the cases is most instructive, and shows the common sense of the decisions. They illustrate the principles of estoppel and agency.

The neatest definition of estoppel is, "Where a man is "concluded by his own act or acceptance to speak the "truth."

Thus, *In re Bahia and San Francisco Railway Company*, where the name of T., a holder, had been forged, and the company had issued a certificate to S. and G., who had eventually sold to R. B., it was held that the company was estopped from denying S. and G. were shareholders, R. B. having parted with his money to them on the strength of the certificate. The company then had to put T. back on the register and also to keep R. B. on.

Had the forgery been discovered whilst S. and G. were still shareholders they would have had no remedy, though they held their certificate, for they had not parted with their money or been damnified by any action on the part of the company, and they would be simply taken off the Register. (*Simm v. Anglo-American Telegraph Company.*)

In this connection one may mention the cases (both House of Lords' decisions) of *Oliver v. The Bank of England* and *Barclay v. The Sheffield Corporation.*

The former decided that a person who presents a forged power of attorney which is acted upon must indemnify the bank, and the latter gave the same decision as to a forged transfer. In the *Court of Appeal* the contrary had been held as to the forged transfer, the reason given being that a person is *bound* to act on a power of attorney, but *not*

bound to act on a transfer. The difference seems rather refining, and it is satisfactory that they should now be on the same level.

The Forged Transfers Acts, 1891 and 1892, do not, as students usually assume, guarantee a person against a forged transfer. They simply *empower* a company or local authority—

(1) To compensate anyone who has purchased shares on a forged transfer; and

(2) For that purpose to charge a fee on each transfer, not exceeding 1s. per £100 nominal.

In other words, *if the Acts have been adopted* by a company, a person holding their certificate is protected, not otherwise.

A rather hard case is that of *George Whitechurch, Lim. v. Cavanagh,* in the House of Lords in 1902, holding that a company is *not* estopped from repudiating a "certification." This seems harsh at first sight, but any other decision would, as pointed out by their Lordships, be almost equivalent to allowing the secretary to issue certificates. The Court further said they were the less reluctant to give the decision as there was a case on record (*Maclean v. Fleming*), where it had been held that a ship-owner was not bound by a bill of lading given by the captain in respect of goods never received.

Finally, it has been decided by the House of Lords, in *Ruben v. Great Fingal,* that a sealed certificate to which the signatures are forged is of no avail. This case overrules that of *Shaw v. Port Philip Mining Company.* Lord Davey quoted with approval the following from the judgment of Willes, J., in *Barwick v. English Joint Stock Bank*:—

> "The general rule is that the master is answerable for every such wrong of the servant or agent as is committed in the course of the service and for the master's benefit. Where" (Lord Davey continued),

"as in the present case, the secretary is acting fraudulently for his own illegal purposes, no representation by him relating to the matter will bind his employers."

The inconvenience likely to arise from the decision was dealt with by Lord James of Hereford as follows :—

"I cannot help observing that the decision now about to be given may cause those who receive certificates in commercial life to be anxious, and to be shaken in their confidence in respect of the validity of those certificates. But in this case the transferee has a safeguard which the company has not. A company cannot protect itself against the frauds of its secretary, and if the company has to bear the burden of this loss, of course, the loss placed upon companies will be very great, and they must guard against it, but certainly theoretically—I do not know whether it is quite the case practically—the transferee has a safeguard, he can always apply to the two directors whose names appear on the certificate, and inquire from them whether their signatures are valid and genuine signatures or not. If the answer is that they are genuine, the certificate, of course, is valid; if the answer is 'No, I have not signed the certificate,' then he is aware that it is invalid. I do not know whether, in commercial life, transferees will take the trouble to inquire of directors whose signatures appear on the certificates whether those signatures are genuine or not, but at any rate there is that power if they choose to exercise it."

(*d*) *Shares at a Discount.*

The cases to study on this point are :—

(1) *Ooregum Gold Mining Co.* : that shares cannot be issued at a discount as between a company and its creditors (that is, if they have been so issued, they must be paid up).

(2) *Welton v. Saffery* : the culminating decision in the House of Lords that, even as between contributories, shares so issued must be paid up.

(*e*) *Liability of Directors.*

Here a student requires to learn well *Derry v. Peek* and Section 84 of the Act, which takes the place of the Directors' Liability Act, 1890, which was passed in consequence of that decision.

The section provides :—

(1) The plaintiff to prove the statement untrue.

(2) The director is then liable unless he proves he believed it true and had reasonable ground for so believing.

(3) If it is the report of an expert it is for the plaintiff to prove that the director had no reasonable ground for believing the person to be an expert (not for the director to prove that he *was* an expert).

(4) If the statement is out of an official document the director is exonerated if the extract fairly conveys the same meaning as the whole official document.

It is a rule of law that among joint wrongdoers there is no right of contribution. Thus, if A. and B. commit a wrong and A. has to pay the whole damages, he cannot recover from B.

This section is the only instance where this is abrogated, and it provides that one director who has paid more than his proportion may sue the others. The same applies to promoters.

The 1907 Act provided that one director who had been guilty of fraudulent misrepresentation should not be entitled to sue another who had not, and this is also incorporated in Section 84 of the new Act.

(*f*) *Surrender of Shares.*

It appears clear that shares may be surrendered against a loss of capital, but not against a revenue loss.

The cases of (1) *Dronfield Silkstone Co.* and (2) *Bellerby v. Rowland and Marwood Steamship Co., Lim.*, appear to be reconciled as follows :—

In both cases shares had been surrendered. It was held in (1) that the shareholder should not be put on the list of contributories, as there was no equity in placing him on the list when he had been off for seven years, during which time the company had been prosperous. In (2) a shareholder had voluntarily surrendered partly-paid shares. The company becoming prosperous, it was desired to replace him on the register. The Court held this was unnecessary, as the so-called surrender was invalid (being in fact a purchase by the company of its own shares), and the person had never ceased to be a shareholder.

(*g*) *Alteration of Memorandum of Association.*

Chronologically the power to alter the memorandum of association is :—

1862.—Power to alter name (now Section 8).
Power to increase capital or divide into shares of larger amount (now Section 41).

1867 and 1877.—Power to reduce capital or divide into shares of smaller amount (sanction of Court required) (now Section 46, &c.).

1890.—The first power ever given to alter the objects (now Section 9).

Since the somewhat recent case of the *North of China Bank* (House of Lords), it would appear that a resolution of the company is all that is needful to empower the Court to sanction reduction of capital. Prior to that case much inquiry was always directed to the proof of the fact whether or not capital had actually been lost.

(*h*) *Original Allottee of Shares and Purchaser on the Market.*

The case of *Andrews v. Mockford* must not be taken as shaking the principle that it is only an original allottee who can sue on the ground of untrue statements in

a prospectus. This case was really one of conspiracy, where A., B., and C. circulated a statement among their "friends," it being arranged that A. and B. would sell on inquiry by C.'s friends, B. and C. would sell on inquiry by A.'s, and so on.

(*i*) *Sale of Bank Shares Act* (*or Leeman's Act*).

This Act provides that on any sale of bank shares the distinctive numbers of the shares are to be stated on the contract note. (The Act is to prevent sales by persons not real holders.) A person having repudiated a purchase on his behalf where such numbers had not been stated, and the broker having set up that it was the recognised custom on the Stock Exchange to disregard the Act, the purchaser was held not liable (*Perry v. Barnett*). The principle is that a person is always bound by the reasonable custom of a market, but not by an *unreasonable* custom, unless he knows of it, and it is unreasonable to disregard an Act of Parliament.

(*j*) *Private Companies.*

The requirements in order that a company may be registered as private are in Sec. 121, viz. :—

Restriction of transfer.
Limit of members.
Prohibition of invitation to public.

And the following sections of the Act do not apply to "private" companies :—

Sec.
26. Balance Sheet to be filed.
65. Statutory report.
72. Assent by director.
82-3. Statement in lieu of prospectus.
85. Restrictions on allotment.
87. Restrictions on commencing business.
114. Right of preference shareholders and debenture-holders to have Balance Sheets, &c.

(*k*) *Other Sections of the* 1908 *Act to be specially noticed.*

Sec.

1. Limitation of numbers in a partnership.
3. Contents of memorandum of association.
9. Power to alter memorandum of association.
13. Power to alter articles of association.
14-16. Effect of registration of memorandum and articles of association.
17. Effect of certificate of incorporation.
24. Definition of a "member."
25. The register of members.
26. ,, annual list.
28, &c. Transfer—study powers of directors to refuse registration.
32. Rectification of register.
58. "Reserve" capital (which cannot be "charged" to debenture-holders).
64. Annual meeting.
65. Statutory meeting.
69. Extraordinary and special resolutions.
72, &c. Directors' qualifications, &c.
76. How a company must contract.
80. The filing of the prospectus.
81. What the prospectus must contain.
82. Where there is no prospectus.
85, &c. Necessary formalities as to allotment.
87. Power to commence business.
88. Return of allotments.
89, &c. Underwriting commission.
91. Payment of interest out of capital.
93. Registration of mortgages. (Contrast the position of a company with that of an individual or firm).
95. Filing of accounts of receiver, &c.
100. Register of mortgages.
103. Perpetual debentures.
104. Power to reissue debentures.
109, &c. Inspectors.
112-113. Audit—to be learnt by heart.
120. Powers of compromise (and contrast with Sec. 192).

VIII.—Receivers.

Many of the points on liquidators, trustees, and receivers are a mere matter of learning by heart. Some points on the two former I have dealt with in Companies and Bankruptcy respectively.

The only practical book on Receivers is "Binnie," and I am afraid even a complete knowledge of that would not enable the student to answer the following questions :

Duties as to a claim by accountants who had received instruction from one partner in the firm name to prepare accounts, which were used by the said partner on the hearing of the action at which you were appointed Receiver. (December, 1901.)

Why should a receiver for debenturme-holders be able to state the amount necessary to cover all claims and expenses at any moment? What accounts are required for that purpose, assuming that he is carrying on a business, including the sale of all kinds of refreshments? (June, 1900.)

It is established beyond doubt that a company *may* charge its uncalled capital, *i.e.*, it is not *ultra vires* (*In re Pyle Works*).

A charge on "all the property" would not cover uncalled capital, but a charge on "all the assets" will do so.

"Reserve capital" (originally under the Act of 1867, now Sec. 58, 1908) cannot be charged, and would pass to liquidator.

Observe the liability of the Receiver under Section 107 of the 1908 Act, formerly the Preferential Payments Act, 1897.

The assets which the receiver cannot collect without the help of the liquidator are :—

(1) Uncalled capital.

(2) Real property unless under mortgage debenture.

(3) Debts.

Note that a receiver for a Parliamentary company cannot sell the undertaking; he can only enter into receipt of the rents and profits.

The Mercantile Law Paper.

One reason why I advocate a lengthened period for reading is because of the immense advantage to be derived from reading the largest possible book on mercantile law. It is difficult, if not impossible, to remember the name of a case deciding a particular point unless you have some knowledge of the facts of the case. An unsupported answer to a law question gives the examiner no insight into whether the candidate has answered from knowledge or whether he has made a blind guess. We all know the law is a "hass," and yet in nine cases out of ten a decision is sound common sense, and the "man in the street" would give the correct answer.

In my opinion "Anson" is the best book to read—I have frequently found points in it which I could not obtain elsewhere.

The following notes may, it is hoped, assist students—I am not a lawyer, and put them forward *on principle* and subject to correction or improvement in detail. The cases quoted may be of use not only in themselves but also for a student to argue from by analogy.

IX.—Agency.

(*a*) *Double Commission.*

A useful case on the principle of double commission is that of *Lord Norreys v. Hodgson,* where it was held that an agent was entitled to a commission from Lord Norreys for obtaining a loan for him, and a further commission from the insurance company who granted the loan for insuring his life with them as security. It was regarded by the Court as two distinct transactions.

(*b*) *Husband and Wife.*

A wife is not the agent of her husband, even for necessaries, if the husband has kept her supplied with cash, and he cannot be sued for liabilities contracted by her under such circumstances (*Debenham v. Mellon.*)

(*c*) *Trust Property and Illicit Commissions.*

The cases of *Re Hallet's Estate* and *Lister v. Stubbs* are not easy to reconcile at first sight. In the former it was held that trust property improperly used may be *followed* by the trust estate, but in the latter it was decided that investments made with the proceeds of illicit commissions could *not* be followed. A closer examination reveals the difference. The trust property belongs, and *always belonged,* to the trust; the illicit commissions do not *belong* to the employer till he has obtained judgment for them.

(*d*) *The Factors Acts and Sale of Goods Act.*

A mercantile agent in possession of goods with the consent of the owner can give a title. In this connection contrast :—

(*a*) *Cahn v. Pockett's B. C. Steam Packet Company, Lim.,* 1899, and

(*b*) *Oppenheimer v. Frazer & Wyatt,* 1907.

In (*a*) it was held that a person to whom a bill of lading and a draft had been sent, but who never accepted the draft, was in possession *with consent,* though he had abused the power given him. In (*b*) it was held that, where goods had been obtained by a trick, there was no consent, and the person in possession could not give any title.

These cases of one of two innocent persons having to suffer are always difficult. *Truman v. Attenborough* is interesting. There B. obtained a necklace *to show.* He immediately pawned it. So far the pawnbroker obtained no title. Later B. induced the owner to *invoice* it to him on the statement (untrue) that he had obtained a purchaser. Even then the pawnbroker had no title. Later B. obtained

another necklace from the same owner, and the pawnbroker advanced on it "*and goods already held.*" This gave the pawnbroker a title to the first necklace on the *new advance* (but not to the second one), as having dealt with one who had a *voidable* title which had not been avoided.

(*e*) *Warranty of Authority.*

A distinction formerly drawn between the liability of an agent who acts without authority—

(*a*) if he never had authority; and

(*b*) where his authority has ceased without his knowledge;

has been disposed of by the decision of the Court of Appeal in *Younge v. Toynbee,* and in each case the agent is liable in damages as upon an implied warranty of authority.

Smout v. Ilberry, so far as it decided otherwise, is overruled.

(*f*) *General.*

You will find it a useful exercise to ask yourself the rights of each party against each other one :—

The rights of the principal against the agent;
The rights of the third party against the agent;
The rights of the principal against the third party.
&c.

X.—Bills of Exchange.

The Bills of Exchange Act is a code, and consequently the Act itself must be well learned. There are few cases to be dealt with, but in particular that of *Vagliano v. Bank of England* should be studied. Reduced to its smallest dimensions the decision was that "an *existing* person may be fictitious," and consequently under Section 6 (3), a bill payable to a person who was never meant to be a party to it is payable to bearer.

One of the obscure differences between a bill and a note (but an important one) is that a *bill* payable to bearer is overdue if in circulation an unreasonable length of time,

and can only be transferred subject to equities (36 (3)); whereas a note is not so overdue (86 (3)). There is much reason in this: a bill on demand is meant to be used at once, a note is not. Probably this is the reason why a note on demand requires an *ad valorem* stamp and a bill on demand does not.

You should also note that the gist of Section 20 (that the entrusting a person with a blank stamped paper operates as authority to fill it up) is that the paper must be stamped. In *Smith v. Prosser,* Prosser had handed a signed paper to a power of attorney in South Africa to be used *if needful.* The need never arose, but the power of attorney stamped and negotiated it, and the holder was held not entitled to recover from Prosser. The Court said Section 20 did not apply. A long series of authorities held that in such a case the paper must have been deposited *with a view of negotiation.* This was not so here, and the holder was held not entitled to recover against Prosser.

As an illustration of answering a question *with authority,* let me point out the way a bill may be discharged, viz.:—

Section 59. By payment.
,, 60. ,, ,, of a *cheque* even on a forged endorsement (but not a *bill*).
,, 61. ,, acceptor becoming holder.
,, 62. ,, waiver.
,, 63. ,, cancellation.
,, 64. ,, material alteration.

Anyone who could give several of these, *including the first,* would effectively show that he had read the Act, for surely no one would deal with the first point unless he knew that it was so specifically stated thereon, it being so obvious.

Other important sections to note are:—

Sec.
3. Definition of a bill; Sec. 83, definition of a promissory note; Sec. 73, definition of a cheque.
14. Due dates.

17. Acceptance.
19. ,, (qualified).
24. Forgery—apparently stronger than Sec. 29 (and read up *Gordon's* case in this connection).
27. "Consideration" for a bill may be "past," and a bill thus differs from all other simple contracts.
29. Most important.
39, &c. The student should familiarise himself with the rules as to presentment for acceptance and for payment.
53-58. These follow in natural sequence.
73, &c. *Re* cheques should be carefully studied.
82. *Gordon's* case and the 1906 Act must be studied here; also the *Great Western Railway* case.
83, &c. Should be carefully considered.

XI.—Guaranties.

A point which always puzzled me personally was the maxim that though, as a rule, the giving of time to a debtor discharges the surety, this is not so if rights are reserved against the surety. The case of *Boaler v. Mayor*, however, clears this up to a large extent. In that case there was quoted from *Webb v. Hewitt* remarks of Page, V.C., to that effect, and he pointed out that the creditor could still proceed against the surety, and then he could proceed against the principal debtor, notwithstanding the time so given him; and it is immaterial whether the surety knows of the agreement or not.

XII.—Gaming Contract.

(*a*) *Stock Exchange.*

A distinction has been drawn by the Courts between *money* and *securities*. Thus it has been held that *money* deposited as cover cannot be recovered if transactions have been entered into and losses put against the deposit—the money being considered to be gone. Not so securities, and these, if not actually sold and appropriated to losses, may be recovered. (*Strachan v. Universal Stock Exchange.*)

(*b*) *General.*

It was held in *Read v. Anderson* about 1891 that a person who paid a bet for another might recover the same from him. The Gaming Act, 1892, was passed to do away with this decision. It must be remembered, however, that one who *receives* a bet is liable to be sued for money in his hands as agent, so that a betting agent should (if he does not always do so !) make sure of cash down.

XIII.—Restraint of Trade.

The authority on restraint of trade is the *Nordenfelt* case.

Here it has been laid down once for all that any restraint is valid which only affords reasonable protection to the purchaser. Therefore in the case in question it was held that where the customers are only *nations* it is not unreasonable to bar the seller from trading *anywhere.*

XIV.—Sale of Goods.

The Sale of Goods Act is, like the Bills of Exchange Act, a code, and little can be said on it. Each section deals with a specific point and it must be well known by all students. Questions upon it must be answered by reference to it, and a candidate must endeavour so to answer as to prove to an examiner that he really *knows* that the Act is his authority when he gives it as such.

Contrast acceptance (Section 4) with acceptance (Section 35).

Section 11 (*b*) defines "Condition," "Warranty."

From Sec. 10, &c., you gather :—

Implied conditions :—

(1) Time of payment is *not* a condition.
(2) A warranty may be a condition.
(3) That there is a right to sell.
(4) That, if the sale is by description, the goods correspond with the description.

(5) That if the sale is by sample—

(*a*) The buyer may compare the goods with the sample.

(*b*) The goods are free from defect.

(6) That, if the sale is by description and sample, they must correspond both with the description and the sample.

(7) That they are fit for the purpose sold.

(8) A condition may be implied by usage.

Implied warranties :—

(1) Under certain circumstances a breach of condition can only be treated as a breach of warranty.
(2) That the buyer shall enjoy quiet possession.
(3) That there is no charge on the goods.
(4) A warranty may be implied by usage.

Sec. 18, as to when the "property passes," should be learned well — each subsection follows in natural sequence.

Sec. 24.—This section is the only one which effected an alteration in the then existing law. Students will remember that where goods are sold in market overt the true owner must prosecute the thief to conviction in order to obtain his goods. This section provides that where goods have been obtained by *fraud not amounting to larceny,* the goods shall not, by reason only of the conviction, revest in the original owner.

From Sec. 27, &c., you gather :—

Duty of seller (which equals rights of buyer) :—

(1) To deliver the goods.
(2) (?) Whether he must send them (usually *not*).
(3) Buyer may reject if too few or too many.
(4) To insure, &c., if sent by sea.
(5) Buyer need not accept by instalments.

Duty of buyer (which equals rights of seller) :—

(1) To accept the goods and pay for them.

(2) (?) Whether he must send for the (usually he must).

Sec. 43 is on the question of lien. In this connection remember a lien is *also* lost by the vendor taking a bill in payment.

Sec. 58.—Under this section note the case of *McManus v. Fortescue,* in which it was held that where an auctioneer, who was selling subject to a reserve, knocked the lot down, by mistake, below that reserve, the buyer could not insist on having the goods.

XV.—General Contracts.

(*a*) *Impossibility.*

Note that the effect of impossibility is—

(*a*) That the contract is void if the impossibility is obvious.

(*b*) That the contract stands good if the impossibility might have been foreseen and provided for. In this connection contrast *Budgett v. Binnington* (where the contractor was liable for not unloading a ship though there was a strike) and *Kearon v. Pearson* (where he was similarly liable, though the cause was severe frost), with *Taylor v. Caldwell* (where a person who had agreed to let a music hall was not liable for damages where the hall was destroyed by fire).

The distinction is not quite easy to see.

(*b*) *Innocent Misrepresentation.*

The effect of innocent misrepresentation is that the contract is voidable if *executory,* but stands good if *executed* (*Seddon v. N.E. Salt Co., Lim.*).

The principle seems rather hard, as, apparently, if I buy and pay for what the seller believes to be a "Landseer," and which turns out to be spurious, I have no remedy.

Conclusion.

As on the former occasion, so now, I will give some criticisms of the examination questions, in the hope that they may reach those in authority, and have some effect. In *The Accountant,* 18th December 1897, Mr. Knox is reported to have said to the Birmingham Students' Society :—

> "It was possible, in the subject of Mercantile Law, that they included too vast an area for the student's mind to properly and thoroughly grasp, and which might be, to some extent, unnecessary in after life."

My own objection to this paper is, as before, viz.—that the questions are set on obscure points which can scarcely, by any stretch of the imagination, ever interest a practising accountant.

In November 1908 one of the bankruptcy questions was on the "jurisdiction of the Court as to the transfer of proceedings to Scotland or Ireland."

In May 1909 one question was as to the difference between an indenture and a deedpoll.

In November 1909 students were required to know "How far a client is bound by an agreement made on his behalf by his counsel on the trial of an action."

The remedy I would again suggest is that the paper (if not entirely discontinued) should be set by an accountant and not by a lawyer. By all means let it be corrected by the latter, but the former would know what points come before accountants, and would probably confine himself to the Bills of Exchange, Partnership, Bills of Sale, and Sale of Goods, as to all of which subjects we should all be well read, in order (not to *advise*) but to be able to take up the position indicated to us by a former President—viz., that of an intelligent client.

I would further suggest a choice of questions, say, ten to be answered out of fifteen.

Some of the Accountancy papers are open to very considerable improvement :—

In May 1908 (Final, Auditing) there were three questions on one point. No. 1 asked as to the record of the financial operations in connection with the purchase of a horse tramway by a municipality and its conversion into electric traction. This was followed by a question as to the necessity for provision of both (*a*) Depreciation and (*b*) Sinking Fund; and No. 3 asked the difference between (*a*) and (*b*)—apparently the same question as No. 2. It may also be noted that the question speaks of "A Sinking Fund for discharging a loan accumulated out of profits."

In May 1908 (Final, Executorship), question No. 4 was to prepare a Balance Sheet, Capital Account, and Income Account for a private investor in respect of certain detailed items. No. 5 was to prepare *for the Executors* (? what they would want it for) a Cash Account and Ledger Accounts for the same items. No point of principle arose on No. 4, and any possibility of a good answer was negatived by the omission of the cost price of one of the investments which was sold. No. 5 was also pointless, and the two together would probably take an hour. Question No. 6 was merely a case of dividing £1,575 into 14/30, 10/30, and 6/30, though it might have been made to test the candidates' knowledge of the rates and incidences of Estate and Legacy Duties.

In November 1908 (Intermediate, Partnership), inquiry was directed to the advantage to a *wine merchant* of having his books kept by double entry. Why a *wine merchant*?

In November 1908 (Final, Partnership), we again had a question (No. 1) made needlessly long by there being four partners, and with no point except the calculation of interest (in months) at 5 per cent., and the division of four shares into 15ths.

It would be interesting to know whether any candidate (and I could disclose secrets as to the 1st prize man) accomplished the whole of the Intermediate Executorship paper in May 1909!

Is it fair to ask for (Final Rights and Duties, May 1910) "the principal words" in the affidavit of a Receiver verifying a cash account?

In the Mercantile Law we were asked about a seaman's right to recover wages.

A question has also recently been asked as to *hops in bond,* whereas there is no duty on hops.

In August 1899 it was resolved by the Examination Committee :—

"That in each of the Final Bookkeeping and Auditing "papers alternative questions may be set as the Committee "determine."

It is a pity the examiners have never seen their way to fall in with this resolution.

I venture to think that the examinations might be improved by :—

(1) Alternative questions.

(2) Marking the value of each question.

(3) The restriction of the Mercantile Law questions—or possibly, 15 questions, 10 only to be answered, would be equally efficacious.

(4) Greater care as to the length of papers : for example, might it not be assumed that a Final man can prepare a Balance Sheet, &c., from a Trial Balance. This would save half-an-hour of time, and might justify one or two questions of principle occupying a few minutes only.

As to a *viva voce* examination, a student's capacity can be well gauged by questioning him upon his own answers. If some means could be devised of doing so before the candidate has an opportunity of conferring with others, I should be in favour of the *viva voce* being revived, but I do not see any means by which this could be accomplished.

Hints to Accountancy Examinees, with Special Reference to the Accountancy Subjects.

A PAPER read by Roger N. Carter, M.Com., F.C.A., to the Liverpool Chartered Accountants Students' Association, 26th October 1911; to the Nottingham Chartered Accountants Students' Society, 2nd November 1911; to the Bradford and District Incorporated Accountants' Society, 7th November 1911; and to the Leeds and District Chartered Accountants Students' Association, 8th November 1911.

It is probably within your knowledge that the lecture on "The Institute Examinations" which I read in 1910 has been published in book form for sale. That being the case, I propose to proceed on the basis of the information contained therein being available to you, and being, therefore, except so far as repetition is *necessary*, omitted in the present instance.

The accountancy subjects naturally embrace—

I.—Auditing.
II.—Bookkeeping.
III.—Executorship.
IV.—Partnership.

The prevailing impression is (and naturally so) that great stress is laid upon the importance of them in our examinations. Let me once more seriously urge upon you that nothing is further from my ideas than to help you to cover your ground *in the least possible space of time*. What I endeavour to do in the following suggestions is to *interest*

you in the subjects, to guard you against errors which I have found to be common, and to encourage you to learn your subjects *well* and *intelligently*.

I.—Auditing.

(*a*) *What an Audit involves.*

The technical duty of the auditor of a company is to certify as to the accuracy of the Balance Sheet (I suppose it is scarcely necessary to say that Section 113 of the Companies Act, 1908, should be learned by heart); the duty of an auditor of a firm may be greatly modified by instructions from the firm, but in such case the qualifications (if any) in the audit should be stated in the certificate. There is nothing in the Companies Act implying that an auditor ought to *detect fraud*, but that is so universally acknowledged to be part of his duty that I do not think any auditor who had passed certain frauds (we know that it is not *every* fraud which can be detected) could escape liability in an action—even if anyone of repute could be found to plead that he had no such duty.

One of the greatest failings in answering auditing questions is due to the confusion between theory and practice. *Theoretically* an *audit* is the examination of a Balance Sheet, &c., *already prepared*. *Practically* (in my experience, at least) it is the examination of the books and the closing of them, and the preparation of Balance Sheet and Profit and Loss Account. This work is of varying dimensions, sometimes (too often, alas!) the work including the *balancing* of the books. I am, of course, only speaking of small or moderate sized places, where there is not a skilled accountant in charge.

The student must in this instance put his practical experience aside, and imagine (what in many cases he has never seen) a set of books fully written up, including Balance Sheet, &c., and placed before him for audit. He will then get out of the fatal error of speaking of "extracting" balances, &c. His duty is to "*check* the balances," &c.; to see that proper reserves *have been made* (not "to

make" reserves). The heavy and trying work involved in obtaining an exact balance, and the time occupied therein, frequently lead a young aspirant to think that when the balance has been obtained the work is done, whereas the *real audit* is possibly barely well started at that point.

(*b*) *The Detail Work of an Audit.*

An intelligent consideration as to the mass of detail work involved in the bookkeeping of a large concern should inevitably lead a thoughtful student to see that an auditor cannot possibly do, in such a case, the same work as he must do in a small concern, where the whole work is in the hands (or under the direct superintendence) of one man. May it then be suggested that the audit of the books of a large concern is imperfect and is governed by the amount of the fee? The answer, of course, is that in a properly organised place a great part of the checking is *automatic* by reason of the manner in which the work is carried out. For example, who would consider, for a moment, the possibility of checking the vouchers (which would be the customers' cheques) in a bank audit.

It is this fact which, I think, must be borne in mind in any question of the adequacy of an audit. Practically you want to ask yourself, after you consider the audit complete, whether you think you could get accountants of repute to support you (in any action) and to say that you had exercised all reasonable precautions in your work.

Passing to the same point from an examination point of view, and being asked for the "programme of audit," is it not a more intelligent answer to specify much checking which may be omitted, giving reasons, than to go through :—

Check Day Book postings,
,, ,, totals,
&c. &c.,

and so on through all the books. It is perfectly clear that much of this work is not done in the case of large concerns,

and this should be recognised. A most useful exercise for a student is to argue with a fellow student, firstly imagining a case where every single item is checked, and then to ask each other whether the audit would not be equally efficient by the omission of first one point and then another. As an illustration, let me ask you how much more do you achieve by checking *everything* (the books being balanced and accounts prepared) than I do if I omit to check the Day Book postings?

Further, as I said on the previous occasion, never advocate (at an examination) a theoretically perfect check, which you know to be impossible of accomplishment.

(*c*) *Continuous Audit.*

A point of supreme practical importance is the advantage, or otherwise, of a continuous audit. I have seen it solemnly stated (1) that the advantage of a continuous audit is that it can be completed sooner than if all done at once; but (2) a disadvantage is that figures may be altered; and (3) that, to be effectual, all the work must be gone over again at the end of the period (!!) unless the books are balanced at every attendance.

Even one who has not had experience of continuous audits might be expected to realise that, by extracting Impersonal balances, the possibility of alteration is obviated.

(*d*) *The Verification of Assets.*

The verification of specific assets is so fully dealt with in various text-books that I will only suggest one or two points.

Remember that an Inscribed Stock is verified by application, under authority from the holder, at the Inscribing Financial House. There is not any certificate for it. A rather unfair question once asked at the Institute Examination was as to the verification of a holding of Egyptian Government $3\frac{1}{2}$ per Cent. Preference Stock. How many practising accountants would *know* that some of this stock

is "inscribed" and some is in "bearer bonds." I should suggest the answer should have been—

If inscribed (as above);

If not inscribed, see certificate;

and I think any candidate should be entitled to full marks for such an answer.

I take it that (say) in a bank or building society audit it is impossible to verify the *adequacy* of the security—that is for the management to see to—and the principal point for the auditor is to see that the security required by the directors is in existence. This must, of course, be taken in connection with the customer's account—a dead account, and the security therefor would naturally be scrutinised in a very different manner from that in which a live one would be.

Questions have been asked from time to time as to the verification of an asset which has been parted with between the date of making up and the date of the Balance Sheet, *e.g.*, (*a*) a bearer bond, or (*b*) a bill receivable. In respect of (*a*), the answer must obviously be to see the broker's note, and so far as possible to be assured that the bond was *the one* held at the date of the Balance Sheet and had not been *purchased* since that date. As to (*b*), the position is by no means so easy. It is not at all likely that a bond would be bought and sold within the limited time comprised between the making up and the date of the audit, but it is much more possible that the banker's note (produced as evidence) as to the discounting or crediting of a bill could refer to a new bill (received and not entered) instead of the one to which it (fraudulently) purported to relate; still, the best one could do would be to see a banker's note and take reasonable steps to be assured that it referred to the bill in question.

(*c*) *Examination of Lists of Debtors.*

The points to watch are :—

(1) Age.

(2) Composition.

I am conscious that we are all far too apt to think that other minds will travel in the same groove as our own, but, even guarding against this, I have been surprised at the answers I have seen to such a question as the following :—

In auditing a set of books (duly balanced) at 31st December 1908, you find the following balances :—

	£
1. A credit balance Cash Account	125
2. A debit to X. in the Credit Ledger :	
July 31. To cash	75
3. A credit to Y. in the Debit Ledger :	
Dec. 31. By cash	50
4. A debit to Z. in the Debit Ledger :	

July 1.	To goods	£10	Aug. 1.	By cash and dis.	£10
Aug. 1.	,,	12	Oct. 1.	,, ,,	15
Sept. 1.	,,	15	Dec. 1.	,, ,,	20
Oct. 1.	,,	20	,, 31.	,, balance	12
		£57			£57
Dec. 31	To balance	£12			

What inferences might be drawn from these items.

With respect to (1) the point is that a credit balance to Cash Account is an impossibility, except in the unlikely circumstance of the cashier having advanced cash *himself;* he probably therefore *does not balance his cash.*

As to (2) I should draw the conclusion, the cash payment being five months old, that an invoice had not been put through. That seems to me the most *likely* thing. The £75 might, of course, be a loan to X., but, if so, it would most likely have gone into the Impersonal or Private Ledger.

With respect to (3), I should think, as the date is just on balancing time, that Y. was a person of no credit and *cash with order* had been required. Had the item been an old one, you might suppose it was payment for goods supplied but not put through the Day Book—which would disclose grave irregularity in a vital part of the book-keeping. If it was simply an error in posting either from the Cash Book or from the Day Book, some other account

must be wrong. It could not be an *omission* to post from the Day Book, as the books are balanced.

Looking at (4), one would conclude either :—

(*a*) That the August 1 goods had been returned, and should be credited.

(*b*) That the payment had been posted to a wrong account—thus throwing that account wrong also ; or

(*c*) That the amount had, as a fact, been paid and not accounted for.

(*f*) *Finance Company and dealings in Shares.*

A question was once asked as to the certification of a 31st December Balance Sheet where certain shares had been bought for account 14th January, and other shares (which the company did not possess) had been sold for 14th January.

The first point, I take it, is that such transactions should always be dealt with on the same principle. The purchased shares would appear as assets and the broker as a liability. With respect to the shares sold, it seems to me that the proper method would be to note that "the "company is under obligation to deliver certain shares "which it does not possess"—leaving the directors to deal with the *result* at the meeting.

(*g*) *Legal Decisions and Wasting Assets.*

The question of the provision for wasting of assets is one which, to some extent, falls within the scope of this paper, but it has been so often written upon that I do not wish to *labour* it.

I must, however, impress upon you that the cases so fully reported in "Dicksee" must be thoroughly mastered. As an introduction to them, the paper read by Mr. Cocke to the London Students' Society, and entitled "A Summary of Legal Decisions affecting Auditors," is most useful.

It is somewhat singular how little is said in the Companies Acts as to profit. So far as I can trace there is only the "Dividends and Reserve" clauses of Table A (95-102), where we find (Clause 97) "no dividend shall be paid otherwise than out of profits"; and Section 123 (1) (vii), which provides that "a sum due to any member of a "company, in his character of a member, by way of "dividends, profits, or otherwise . . ." is not to rank with ordinary creditors.

Mr. Palmer (7th Ed., Part I, p. 521) suggests that (on the cases) there are four ways of ascertaining profit:—

(1) Single Account	By a Balance Sheet.
(2) Double Account	Where the Capital and Revenue Accounts are distinct.
(3) The method laid down in *Lee v. Neuchâtel Asphalte Company*	Indicating that revenue from wasting assets may be divided.
(4) The method laid down in *Verner v. Industrial General Trust*	Holding that there must be provision for loss of circulating capital, but not of fixed capital.

He sums up as follows (p. 537):—

(1) A dividend presupposes profit of *some sort*, but it is for the *company* to say what sort.

(2) In determining what sort the company must not pay out of capital or borrowed money, but "Capital" means capital paid up and assets acquired therewith.

(3) There is no need to provide for wasting assets.

(4) Therefore, though the memorandum cannot authorise the return of capital *as such* it may do it by dividing the proceeds of wasting property.

(5) Fixed capital need not be depreciated.

(6) Circulating capital must be depreciated.

(7) Accretions to capital are profit.

(8) Account must be taken of *ordinary* outgoings.—(*St. John* case.)

(9) (Somewhat cynically.) A Balance Sheet need not disclose the true position. It deals with past history, not existing facts.

The Companies Acts, he continues, thus allow the greatest possible liberty to shareholders and the least possible protection to creditors.

And he concludes (a view which I feel will be widely supported): "One thing is clear, viz., that these decisions "do not pretend to touch the commercial or economic "aspect of the matter; and, from that point of view, the "systems of ascertaining profits which they sanction are "so obviously unsound that men of business generally "refuse to act on such systems."

II.—Bookkeeping.

(*a*) *Minimum Rents.*

The following appears to me to be the most satisfactory method of dealing with entries for minimum rents:—

Take the following question:—

A. holds a mining lease from L. from 1st January 1908, on the terms of a minimum rent of £100 per annum, merging in a royalty of 1s. per ton, with power to work off the minimum within twenty years.

In the first year A. works 1,000 tons.

In the second year A. works 2,500 tons.

In the third year A. works 4,500 tons.

The Journal entries should be:—

1908.				
Dec. 31.	Minimum rent	*Dr.*	£100	
	To L.			£100
	(For minimum rent.)			
,,	Profit and Loss Account ...	*Dr.*	50	
	To Royalty			50
	(1s. per ton on coal raised.)			
,,	*Sundries	*Dr.*		
	To minimum rent			100
	Royalty		50	
	Unworked dead rent		50	
1909.				
Dec. 31.	Minimum rent	*Dr.*	£100	
	To L.			£100
,,	Profit and Loss Account ...	*Dr.*	125	
	To Royalty			125
	(1s. per ton on coal raised.)			
,,	*Royalty Account	*Dr.*	125	
	To Sundries—			
	Minimum rent			100
	Unworked dead rent ...			25
1910.				
Dec. 31.	Minimum rent	*Dr.*	£100	
	To L.			£100
,,	Profit and Loss Account ...	*Dr.*	225	
	To Royalty			225
	(1s. per ton on coal raised.)			
,,	*Royalty	*Dr.*	225	
	To Sundries—			
	Minimum rent			100
	Unworked dead rent ...			25
	L.			100

* To arrive at this entry Royalty must be debited and Minimum Rent credited such an amount as will close both accounts. If a debit is required to complete the entry it must go to Unworked Dead Rent; but if a credit, then to Unworked Dead Rent till that account is closed, and afterwards to L.

In dealing with minimum rents I have seen students credit the landlord full royalty on the mineral got and then debit him if there is any unexhausted dead rent. This may be convenient, but it appears to me wrong in principle to credit what a man is never entitled to. The unexhausted Dead Rent Account should be looked at, and the landlord not credited more than the minimum rent until that account is exhausted.

Great care must be taken to debit Profit and Loss Account with any unworked dead rent which has become irrecoverable.

(*b*) *Repayment of Debentures.*

It is by no means unusual for debentures to be repaid (or a sum provided for that purpose) periodically. In such a case the Balance Sheets at the commencement, at an intermediate period, and at the end of the period, would be as follows:—

BALANCE SHEET, 31st December 1900.

	£		£
Capital	100,000	General Assets	120,000
Debentures redeemable in 20 years	20,000		
	£120,000		£120,000

BALANCE SHEET, 31st December 1910.

	£		£
Capital	100,000	General Assets	120,000
Debentures	20,000	Investments (held by Trustees for Debenture-holders or otherwise) ..	10,000
Reserve Fund for Redemption of Debentures ..	10,000		
	£130,000		£130,000

BALANCE SHEET, 31st December 1920.

	£		£
Capital	100,000	General Assets	120,000
Debentures	20,000	Investments (held by Trustees for Debenture-holders or otherwise) ..	20,000
Reserve Fund for Redemption of Debentures ..	20,000		
	£140,000		£140,000

It will be noticed that, after repayment of the debentures, the "Reserve" will remain. The meaning of this is that profit has been made which, instead of being distributed as dividend, has been used to pay off liabilities. *Cash* cannot be used for two purposes, but there is *profit legally divisible*, and the Reserve Fund could be allotted among the shareholders (in lieu of cash) for new shares. It is not, of course, impossible to repay even though there were not any profit, but the business which could stand such a draft upon its assets is a very exceptional one, and in most cases the amount must *necessarily* be out of profit.

(*c*) *Stocks.*

The valuation of stock is a matter upon which candidates usually display neither originality nor common sense. "Cost or market price, whichever is the lower," is considered the perfect answer. But does anyone take stock on such a basis? If goods have been bought for £1,000 on 20th December, because there is a contract to sell such goods to A. on 31st January, why on earth should they be taken at £900, if the market has fallen? Again, if there is a stock of an article which can be sold at once in bulk, *i.e.*, where it is not necessary to seek a customer (*e.g.*, cotton, coal, iron, corn—as distinguished from clothes, furniture, &c.), there is no objection to taking at selling price, if this is done uniformly—and so on. In other words, you cannot lay down *one rule* as to valuation of *any stock*—the reason for holding it must be looked at.

(*d*) *Accounts Current.*

I presume that any student who has ever seen an ordinary Account Current (even if only in a text-book) should have little difficulty in drawing one up from a given set of figures. Firstly, remember the account is a copy, from the Ledger Account of the one who sends it, of the account of the person to whom it is sent, so that receipts are *credits* and payments are *debits*. The fact

that interest must run from *due dates* is illustrated by the following account :—

A manufacturer, P., consigns 50 cases of goods to his *del credere* agent, A., on January 1st. The cost of the goods to P. is £5 per case. The agent advises :—

Feb.	1.	Paid carriage	£20
,,		Sold 5 cases at £7 per case, due 1st August	35
,,		He remits	20
Mar.	1.	Sold 5 cases at £8 per case, due 30th June	40
,,		He also remits	30
June	1.	Sold 30 cases at £6 per case for cash	180

On 30th June A. sends an Account Current made up with interest at 5 per cent., and remits a cheque for the balance.

Give a copy of the Account Current.

Dr. P. IN ACCOUNT WITH A. *Cr.*

		Interest	Time	Amount			Interest	Time	Amount
		£ s d		£ s d			£ s d		£ s d
1911					1911		*0 2 11*	*1 mo.*	35 0 0
Feb. 1	To Cash Carriage	0 8 4	5 mo.	20 0 0	Feb. 1	By Proceeds due Aug. 1 ..		Nil	40 0 0
"	" "	0 8 4	5 "	20 0 0	Mar. 1	" " " June 30 ..		1 mo.	180 0 0
Mar. 1	" "	0 10 0	4 "	30 0 0	June 1	" " for Cash ..	0 15 0		
June 30	" Interest (cont.)	0 2 11			" 30	" Balance of Interest ..	0 14 7		
"	" Balance of Interest ..			0 14 7					
"	" Cheque to Balance ..			184 5 5					
		£1 9 7		£255 0 0			£1 9 7		£255 0 0

The 2s. 11d. is put in red ink, and either *deducted* in adding that side, or inserted and *added* (as above) on the debit side.

(*e*) *Repairs and Renewals.*

Upon the question of the treatment of Repairs and Renewals, may I refer you to a paper which I read at Newcastle and Leeds in 1909. In it I supported the method in vogue in some concerns of one sum for "Repairs, renewals, and depreciation," and I gave the following accounts to illustrate the effect :—

PLANT ACCOUNT.

		£
1900 Dec. 31	To Cash....	100,000
1901 Dec. 31	„ *Additions	1,000
		101,000
1902 Dec. 31	„ Additions	2,000
		£103,000

* (All *Additions*, not Renewals.)

DEPRECIATION ACCOUNT.

		£			£
1901 Dec. 31	To Repairs and Renewals	500	1901 Dec. 31	By Profit and Loss Account, 5% on £100,000	5,000
	„ Balance ..	4,500			
			Dec. 31	„ Balance..	4,500
1902 Dec. 31	„ Repairs and Renewals	1,000	1902 Dec. 31	„ Profit and Loss Account, 5% on £101,000	5,050
	„ Balance ..	8,550			
			Dec. 31	„ Balance..	8,550
1903 Dec. 31	„ Repairs and Renewals	3,100	1903 Dec. 31	„ Profit and Loss Account, 5% on £103,000	5,150
	„ Balance ..	10,600			
			Dec. 31	„ Balance..	10,600

and so on.

Exception is sometimes taken to this method by the argument that repairs should be charged to revenue as executed, and that only renewals can be treated as above. But where is the line to be drawn? Such a rule might delay "repairs" too long, and encourage "renewals." It

may be said that such a policy would be suicidal, but one has seen too many cases of financial suicide to consider them improbable or even unlikely. I fear any discrimination is based mostly on cost—a heavy "repair" becomes a "renewal." By one account for *all,* I think this difficulty is obviated and temptation removed.

III.—Executorship.

Almost the only difference between Executorship Accounts and other accounts is that a knowledge of executorship law is necessary to enable you to know how to *close* the accounts. Following the Index of my own little book on Executorship, the principal points directly bearing on accounts appear to me to be :—

Legacies (and the question of lapse).

Apportionment.

The Rule in *Howe v. Lord Dartmouth.*

Intestacies.

Incidence of Estate Duty, Settlement Estate Duty, and Legacy Duty.

Provision for Annuities.

(*a*) *The Actual Working of a Question.*

I have no doubt that one difficulty which presents itself to candidates is as to the exact manner in which an account question should be "tackled," and with the hope of giving some assistance on this point I will take, as an example, the following question asked at the Institute Examination in June 1911 :—

John Smith died 30th June 1910 possessed of the following estate:—

	Valued for Probate.
Cash at bank	£10,000 0 0
Cash in house	523 15 2
£20,000 2½ per cent. Consols at 80 (*ex div.*)	16,000 0 0
Leasehold house	2,000 0 0
Household furniture and effects	750 0 0
Other investments (*cum div.*) ...	116,000 0 0

The debts at death were £5,310.

By his will, dated 1st June 1909, John Smith left his estate as follows:—

(*a*) £500 each (free of duty) to his executors (A., a stranger in blood, and B., his eldest son).

(*b*) £1,000 annuity to his sister C. (free of duty), payable quarterly, first payment to be made three months after date of death.

(*c*) The residue of his estate in equal shares to his three sons, B., D., and E. (children of a deceased son to take *per stirpes*) with the stipulation that the sum of £5,000 advanced to his son D. on 1st May 1909 must be brought into "hotchpot."

Son E. died 1st January 1910, leaving two children. F. and G.

The executors proved the will, and on 30th September 1910 paid the estate duty.

On 1st October the Consols were sold at 81, and the household furniture was sold for £700.

The dividends (less income-tax) on the Consols, due 5th July and 5th October, were duly received and banked.

By 31st December 1910 the executors had made the following payments:—

Funeral expenses, £75; tombstone, £25; debts due at death, £5,310; executorship expenses (including first instalment of duty payable on C.'s annuity), £720: executors' legacies and duties thereon, and two quarterly payments of annuity (less income-tax).

In the meantime, £2,040 had been received as interests and dividends on "other investments," of which £1,000 had accrued due at the date of death.

Write up the executors' Cash Book, prepare the following accounts:—

Estate Account on 31st December 1910;

Income Account for six months ended 31st December 1910;

Balance Sheet on 31st December 1910;

and give a statement showing the amount due to each of the residuary legatees, assuming that the annuitant died on 1st January 1911, the leasehold and investments realised the amounts stated, and there were no further receipts or expenses except the necessary legacy duties.

Following the usual practice, we turn to the *end* of the question *first* to see what we have to do. We find there is a Cash Account to prepare, but, running our eye over the figures given, we see that there is not any figure stated for duty, so we must first ascertain this. As we are not asked to give the affidavit any rough method of ascertaining the duty will answer, but by all means put the paper in with your answers to show *how* you get your figure, in order that, if it does not agree with the examiner's, he may see *in a moment* what the difference is—whether a *clerical* error or one of principle.

Our rough note might then read:—

Total per print		£145,273 15 2
(Being ranged, the figures can be added on the question sheet without taking the time to re-write them.)		
Add Consols div., as they are *ex div.*	£125 0 0	
Tax	7 5 10	
		117 14 2
(There being only one dividend, make the amount *exact*. If there were a number you might save time by putting them gross, with a note to that effect.)		
		£145,391 9 4
Deduct—Debts ...	£5,310 0 0	
Funeral exps.	75 0 0	
		5,385 0 0
		£140,006 9 4
Duty 9 per cent.		£12,600 11 8
Three months' interest at 3 per cent.		£94 10 1

The next thing is to carefully read the whole question, and note the information *in the most convenient place*. Thus the sale of Consols and furniture may be noted against the schedule of assets; the date that legacies, &c., were paid may be noted against the items (*a*) and (*b*); the dividend on "other investments" against the £116,000; the fact that leasehold investments realised the amount stated (presumably on December 31). At the same time, the pen should be put through the items which have been noted, so as to avoid re-reading them. The information is thus in a concrete form to work at, and, taking the figures from the commencement of the question, we may construct the Cash Account.

		Income	Capital			Income	Capital
1910		£ s d	£ s d	1910		£ s d	£ s d
June 30	To Cash in Bank		10,000 0 0	Dec. 31	By A. Legacy		500 0 0
"	" " House		523 15 2	"	" Duty thereon		50 0 0
July 5	" Dividend on Consols—			"	" B. Legacy		500 0 0
	(*a*) 5 days .. (*say*)	6 10 0		"	" Duty thereon		5 0 0
	Balance of £125, *less*			Sep. 30	" Estate Duty and Interest	94 10 1	12,600 11 8
	Tax		111 4 2	"	" C. Annuity	235 8 4	
Oct. 5	" Do.	117 14 2		Dec. 31	" " "	235 8 4	
" 1	" Proceeds of Consols ..		16,200 0 0	"	(*c*) D. (contra)		5,000 0 0
	" " " Furniture ..		700 0 0	"	Funeral Expenses ..		75 0 0
Dec. 31	" " " Leasehold ..		2,000 0 0	"	Tombstone		25 0 0
	" " " other Invest-			"	Debts		5,310 0 0
	ments ..		116,000 0 0	"	(*b*) Executorship Ex's and		
"	(*c*) Advance to D. (contra)		5,000 0 0		Duty on C.'s Annuity		720 0 0
"	Interest on Investments	1,040 0 0	1,000 0 0			565 6 9	24,785 11 8
				"	Balance	598 17 5	126,749 7 8
		£1,164 4 2	£151,534 19 4			£1,164 4 2	£151,534 19 4

(*a*) I should always consider it legitimate to estimate figures.

(*b*) This gives an opportunity of stating that C., having died, there is no further duty payable on her annuity.

(*c*) This is brought in here (perhaps not legitimately) so that there is no fear of it being missed.

I do not attach great weight to *order of date*. It seems to me more important to take an investment at date of death, and follow it till sale, seeing that all dividends due have been accounted for. Moreover, it would be a heavy task, if there were several investments, to get the income in exact order of date.

The Income Account and Estate Account may now be easily posted up, and (to save writing) might appear :—

INCOME ACCOUNT.

1910		£ s d	1910		£ s d
Dec. 31	To Total per C. B. ..	565 6 9	Dec. 31	By Total as per C. B.	1,164 4 2
	„ Estate Account transfer	598 17 5			
		£1,164 4 2			£1,164 4 2

Estate Account.

1910		£ s d	£ s d
Dec. 31	To Total per C. B. (except £5,000)		19,785 11 8
"	Balance :—		
Subject to 1% Legacy Duty	B., ⅓rd	£44,116 1 9	
	*D., ⅓rd	44,116 1 8	
	Reps. E., ⅓rd		
	F. ½ of ⅓rd £22,058 0 10		
	G. ½ of ⅓rd 22,058 0 10		
		44,116 1 8	
			132,348 5 1
			£152,133 16 9

1910		£ s d
Dec. 31	By Total per C. B.	151,534 19 4
"	" Income Account transfer	598 17 5
		£152,133 16 9

* £5,000 to be deducted from his share.

(*b*) *Apportionment, &c.*

A question sometimes asked is for the apportionment of:—

Rent for March quarter	£10	0	0
Less income-tax, Sch. A, at 1s.	1	13	4
	£8	6	8

where the testator has died 31st December. If this can be described as a "trap," it is a legitimate one. The tax, of course, is 1s. in the £ on £33 6s. 8d. (£40 − $\frac{1}{6}$th) for the year to 31st March—consequently income is entitled to—

Rent	£10	0	0		
Less tax on 5/6ths of £10 ...	0	8	4		
				£9	11	8
And capital must be *debited* $\frac{3}{4}$ths of £1 13s. 4d.				1	5	0
Net				£8	6	8

It has been held in *Re Sir Robert Peel's Settled Estates,* that when trustees invest in railway preference stock after the conclusion of a half-year, but before the dividend has actually been paid, such dividend when received by the trustees must be treated as capital.

It is very difficult to see what difference there is in principle between buying a whole dividend and buying a part. Possibly the Courts are weakening in the view (laid down over and over again) that there is not to be any apportionment on a change in an investment!

Where there is a life interest in a settled legacy contingent on the life-tenant attaining 21, any accumulations of interest during minority follow *the capital,* and are not payable to the life-tenant at majority. (*Re Bowlby, Bowlby v. Bowlby.*)

(*c*) *Arrears of Dividend on Cumulative Preference Shares.*

An interesting question arises as to the rights of the parties where arrears of dividend are paid on cumulative preference shares. Assume a testator to die 31st December

1908, leaving preference shares with several years' arrears of dividend on them, and that the said arrears are paid off in 1910 out of the profits of 1909. Is the amount capital or income? The answer to the question turns on the Apportionment Act, 1870, Section 2 :—

> From and after the passing of this Act, all rents, annuities, dividends, and other periodical payments in the nature of income (whether reserved or made payable under an instrument in writing or otherwise) shall, like interest on money lent, be considered as accruing from day to day, and shall be apportionable in respect of time accordingly.

And Section 5 :—

> . . . and all such divisible revenue shall, for the purposes of this Act, be deemed to have accrued by equal daily increment during and within the period for or in respect of which the payment of the same revenue shall be declared or expressed to be made. . .

There was considerable correspondence on the point in *The Accountant* in 1908. The nearest case I have been able to trace is that of *Re Taylor; Matheson v. Taylor,* heard by Buckley, J., in 1905. In that case bonds of the Mexican National Railroad Company were included in a settlement made in 1899. The income was to be to H. G. T. (who died 1902) for life, then to W. T. for life, with remainder to X. The bonds carried cumulative interest at 6 per cent., payable "as and when earned out "of any net earnings . . . and if in any year the "net earnings . . . shall not be sufficient . . . "any deficiency . . . shall be paid . . . as and "when there shall be any net earnings available." The interest was in arrear in 1899, and nothing was paid up to 1902, when the bonds were sold.

The Court directed that the whole proceeds were capital. They said no fund was in existence out of which to pay the interest, consequently there could not be said to be any "arrears."

Buckley, J., said :—

"It seems to me that there was no interest payable at all as income of a year in which there was no fund available for its payment. Suppose that in the year 1904 there was no fund available, and the tenant-for-life died on 31st December 1904. There was no income, I apprehend, payable to that tenant-for-life, because the obligation is to pay out of a fund, and there was no such fund. If in the year 1905 a fund came into existence, the interest calculated for the year 1904 would become payable, I agree, but it would be income of the year 1905, and not income of the year 1904; and if a second tenant-for-life were in enjoyment of the property for 1905, that tenant-for-life, and not the previous tenant-for-life's estate, would, it seems to me, take that interest. It all turns on this : There is no obligation in the instrument to pay interest, there is only an obligation to pay interest out of a fund, and there is no obligation to pay unless there is such a fund."

These words are, of course, only *obiter dicta,* and if one might argue on the basis of not being bound by the case, I suggest that the words (quoted) in Section 5 would give the dividends to the remainderman. In my experience the usual expression of the directors is that the dividend is for "the years 1905 and 1906," or "for the 18 months up to 30th June 1908," &c. It has been argued that directors could not declare a dividend in 1910 (out of 1909 profits) "for the year 1906," because, since there were no profits in 1906, there was nothing legally due, and that five years' arrears of dividend is 25 *per cent. for the current year.*

I must confess that, had I my choice, I would rather act as advocate for the view that the dividend had accrued in those back years, and that our case was to be distinguished from *Re Taylor; Matheson v. Taylor.*

(*d*) *Annuities.*

Where a testator dies *liable for an annuity* the whole amount is a charge against capital.

Where, however, the testator has *bequeathed* an annuity some difficulty may arise.

It seems clear that, where a sum of money is to be invested in an annuity the annuitant is entitled to the value of the annuity instead of taking annual payments.

Where legacies and annuities were left with residue to A. for life and remainder to B., it was held that the annuities must be paid out of income so far as possible, and then capital must be resorted to year by year. (*Re Grant,* 1883.)

Where there was a bequest of three annuities and "subject to the aforesaid annuities," an absolute bequest of residue, and the income of the estate was insufficient to pay the annuities in full, it was held that the annuities were a charge on capital. (*Re Howarth; Howarth v. Makinson.*)

Where there was a bequest of legacies, then an annuity, with a direction to set aside a sum to meet same (resorting to the capital, if necessary), and the estate was sufficient to provide the *value* of the annuity, but not sufficient to provide a fund to produce it, it was held (referring to *Wright v. Callender*) that the annuity was to be valued as at the date of the death, and the amount either paid to annuitant or invested in the purchase of an annuity, and the pecuniary legacies were to be paid in full. (*In re Cottrell; Buckland v. Bedingfield,* 1910.)

Strachan's "Law of Trust Accounts" says that the following methods of adjustment between life-owner and remainderman of life annuities charged on the capital and income of the trust estate have been followed, or suggested:—

(1) Ascertain what sum with simple interest from the testator's death will meet each instalment of the annuity as it accrues, charge the sum so arrived at to capital, and the balance of the instalment to income. (*Re Perkins.*)

(2) Adjust the annuity according to the respective values of the interests of the life-owner and remainderman in the trust estate. (*Re Dawson.*) If the annuity is given by will its value is ascertainable as at the testator's death. Thus, suppose an annuity of £100 is charged on capital and income: the life interest in the fund is valued, say, at £1,000, the reversion at £4,000: the life-owner will contribute one-fifth and the reversioner four-fifths of each instalment of the annuity.

(3) Raise each instalment of the annuity as it becomes payable out of the capital of the fund by sale, or mortgage (*Re Bacon*), the life-owner contributing his share, if by

sale, by loss of income on the capital withdrawn; and if by mortgage, by keeping down the interest on it according to the usual rule.

(4) Life-owner (if one) to find the capital for each instalment due, taking a charge for it, and keeping down the interest on the charge. (*Re Harrison.*)

He considers method (1) the best.

It will be noticed that (though it is not easy to draw *one rule* as to the mode of treatment) the fact of an annuity being paid *quâ annuity*, or the annuitant drawing the cash, must not affect the position as between tenant-for-life and remainderman; in other words, the wording of the will must be looked at and an adjustment made to produce the effect intended by the bequest.

IV.—Partnership.

My opening remark on Executorship applies with even greater force to Partnership Accounts, and I may almost content myself with repeating what I said on the former occasion.

If asked for suggestions for partnership articles, I consider the answer should not be that X. *should have* interest on his capital, and Y. *should have* a salary for additional services, but:—

Since the Partnership Act provides that in the absence of agreement:—

(1) Profits are divided equally;

(2) There is no interest on capital;

(3) There is no salary to a partner, &c.,

provisions should be made in respect of these points; and so on.

As to accounts, firmly impress upon yourselves that it is profits or losses which have to be divided, *not assets.* Thus, if you are told A. puts £10,000 into a business and B. £5,000, and on a winding-up they are just able to pay their liabilities and have £1,000 over, you must first draw yourself a Balance Sheet thus:—

Liabilities...	£15,000	Assets ...	£30,000
A.	10,000	Realised...	£16,000
B.	5,000		

It is obvious there is a *loss* of £14,000, that is, £7,000 each. Therefore A. takes the £1,000 and B. must bring in £2,000 to equalise (which A. then draws).

With this firmly in your mind you should have no difficulty.

Authorities differ as to the exact effect of the decision in *Garner v. Murray,* and I commend this case to your consideration. I think, however, I am not going too far in suggesting that there is common agreement on the point that "the loss caused by failure of a partner to con- "tribute his share is to be borne by the other partners, "not in the proportions in which they bore ordinary profits "and losses, but in proportion to their capital."

Conclusion.

The "Contents" sheet or "Index" of a text-book affords an admirable basis for *review.* To go through such with a friend and tell him *what you know* of a (say) "Composition or Scheme of Arrangement" is an exercise of incomparable value. It gets you into a *full* knowledge of the point at issue, and enables you to answer any question of detail that may be asked thereon. Your friend should take the judicial attitude of knowing nothing about the matter, so that you may find yourself pulled up to explain "why there was a meeting of creditors," if you have not started your narrative at a sufficiently early stage.

As a final suggestion for saving time, if you are asked to "write a letter" in reply to a request for what you would require for a purpose, I do not think you are expected to go into profuse thanks to the client for entrusting the work to you, and so on. I assume the examiner simply requires—

> In reply to your letter as to the writing up of the accounts of the estate of the late Mr. A., I shall require :—
>
> (1) .....
>
> (2) .....
>
> (3) .....
>
> Yours faithfully,
>
> .....

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